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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Working paper submitted by Mr. Asbjörn Eide
and Ms. Christy Mbonu

Possible United Nations Activities for an International Year for Indigenous Rights

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I. Legislative authority for recent International years

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I. GENERAL GUIDELINES

1. Since the mid-1970s, official anniversaries and promotional years have multiplied, and at the same time come under increasing scrutiny and criticism. As early as 1973, the General Assembly appealed to Member States to limit proposals for years to "the most important occasions and, where possible, to propose instead celebrations of brief duration". 1/ Guidelines for international years were adopted by the General Assembly in 1980, 2/ with an emphasis on producing concrete results. Consideration of a proposed year is now likely to be preceded by a Secretariat study of possible activities, as recently was the case for the International Year of the Family. 3/ A growing number of issues are being addressed not through a year, but a single global conference resulting in a plan of action as, for example, on the question of aging. 4/

2. Cost-effectiveness has been a growing concern, particularly of the western European and other group. In 1979 the Assembly asked that administrative costs connected with the International Year of the Child be "kept to the minimum". 5/ Subsequent celebrations have generally been financed from voluntary contributions rather than a reallocation of resources from the regular United Nations budget.

3. UNESCO is currently considering guidelines which would also require more stringent advance justification of the celebration's results. 6/ "The celebrations should be such that UNESCO, by being associated with them, can draw from them moral benefit and prestige throughout the world, while developing mutual knowledge among member States." Budgetary implications would be evaluated explicitly in advance of a decision.

II. PURPOSES OF YEARS

A. Promotional

4. The purpose most frequently advanced to support United Nations years has been publicity. The International Year of the Child was to result in an increased awareness of the needs of children, 7/ and provide a "framework for advocacy on behalf of children and for enhancing the awareness of the special needs of children on the part of decision-makers and the public". 8/ Drawing international attention to the needs of the target group was also an aim of the International Year for Disabled Persons, 9/ and the International Youth Year sought "widespread publicity" for youth issues. 10/

5. Years have been used to mobilize public opinion in support of particular United Nations programmes as well. The International Year of Peace, for example, had as one of its purposes "bringing about a sustained increase in understanding of and support for the work of the United Nations". 11/

6. To be effective in mobilizing international public opinion, a public information campaign must be carefully planned in terms of both media and target groups. In connection with years as well as the current World Public Information Campaign on Human Rights, this seems generally to have been left to non-governmental organizations and Governments. 12/ In the case of indigenous rights, education of indigenous peoples themselves, especially in non-print media, would be as important as general public information.

Article 30 of the newly-adopted ILO Convention on Indigenous and Tribal Peoples, No. 169 (1989), refers to indigenous peoples' right to be informed about their rights and duties, where necessary in their own languages.

B. International co-operation

7. Years have often been aimed at strengthening international co-operation. Goals for the International Women's Year included "intensified action" by States and intergovernmental bodies. 13/ Likewise, the International Youth Year sought to "consolidate the efforts of all States" and to "improve the activities of the United Nations and the specialized agencies" and increase international co-operation in that field. 14/ The International Year of Disabled Persons sought support for research, 15/ while the International Year of Shelter for the Homeless recommended "consolidating and sharing all new and existing knowledge and relevant experience" as well as promoting a "full range of tested and practical alternatives". 16/ United Nations activities can undoubtedly contribute to disseminating existing knowledge and to stimulating innovation, but this will have little practical effect where the problems addressed are rooted in politics rather than ignorance.

8. Resource transfers have also been contemplated. For example the International Year of the Child was to "mobilize support for national and local action programmes according to each country's conditions, needs and priorities". 17/ Similarly, the Decade of Disabled Persons called for international co-operation to assist the developing countries in implementing projects at the national level. 18/

C. Increasing participation

9. "Full participation" in national society was the goal of the International Year for Disabled Persons, 19/ and a major theme of the Nairobi Forward-Looking Strategies for the Advancement of Women. 20/ The International Youth Year referred to "involving" the target group more fully in the work of the United Nations system itself. 21/

10. Popular participation figures prominently in the 1986 Declaration on the Right to Development, and in United Nations operational programmes for development. As a recent report by the Secretary-General concluded, "broadly based participation in development programmes is essential". 22/ It should therefore play a greater role in future years. This is particularly applicable to a year for indigenous peoples, whose right to participate in, and to the greatest possible extent control their own development has been recognized by article 7 of ILO Convention No. 169.

III. PROGRAMMES AND ACTIVITIES

A. Publications

11. All years have generated special publications. Publications appear to have been the largest contribution of United Nations specialized agencies to the International Women's Year. 23/ The preparation of teaching materials and teaching aids has been a major feature of the programme of action for the Second Decade to Combat Racism and Racial Discrimination, 24/ and the World Public Information Campaign on Human Rights launched in connection with the Fortieth Anniversary of the Universal Declaration of Human Rights. 25/

12. The preparation of educational materials may be especially appropriate in the context of indigenous rights. When approving the proposal for a United Nations seminar on relations between indigenous peoples and States, the Economic and Social Council encouraged States:

> to ensure that educational and informational activities, including national celebrations, give an accurate interpretation of history and do not perpetuate or justify theories of racial superiority or the subjugation of indigenous or other peoples. 26/

Similarly, article 31 of ILO Convention No. 169 provides that:

> Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these people. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

B. Meetings and conferences

13. Past international years and decades have involved a great variety of meetings, such as regional preparatory seminars, 27/ planning meetings with representatives of national non-governmental organizations, 28/ technical meetings of governmental experts, 29/ and conferences convened by specialized agencies. 30/ Seminars and conferences dominate the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination. 31/

14. A number of specialized meetings on indigenous peoples have recently been held, or are planned, in connection with the Second Decade and with the programme of advisory services in the field of human rights:

(a) Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States (Geneva, 16-20 January 1989);

(b) Meeting of experts on indigenous self-government, planned for 1990/91 in accordance with General Assembly resolution 42/47; 32/

(c) Conference on practical experience in the realization of sustainable and environmentally sound self-development by indigenous peoples, requested, subject to ECOSOC approval, for 1991; 33/

In addition, the Sub-Commission has recommended the holding of regional training courses for indigenous peoples themselves, in human rights and international procedures. 34/

15. By rewarding national leaders with greater visibility, an international year offers the opportunity for organizing higher-level policy meetings. Emphasis should be on organizations and agencies which have not yet developed programmes in co-operation with indigenous peoples, such as the Organization of American States, and Organization of African Unity, and within the United Nations system, World Health Organization and Food and Agricultural Organization.

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C. Demonstration projects

16. Only the International Year of Shelter for the Homeless made express provision for United Nations support of demonstration projects, 35/ a useful idea that merits further elaboration. A voluntary fund (discussed below) could support the most practical and innovative proposals from Governments and non-governmental organizations for projects in education and development, and publish the experience of these projects as part of a year-end promotional campaign. This would probably attract more widespread grassroots indigenous participation in the year, than other more political and informational activities.

D. Political commitments

17. As part of the International Year of Disabled Persons, the Assembly invited the Secretary-General and heads of States to issue special messages of support for the theme and goals of the Year. 36/ While arguably superficial, official messages which are given wide publicity can constitute political commitments, and influence subsequent national policies and action. Since the field of indigenous rights is still evolving - and controversial - it would seem useful to use an international year to formalize a global political commitment to difficult but essential concepts such as self-development and autonomy.

E. National institutions

18. Previous years have called for the establishment of various kinds of national institutions, both a co-ordinating mechanism for activities during the year itself, and for follow-up activities. The establishment of national women's commissions or bureaux was one of the recommendations of the International Women's Year, for example, 37/ and was in fact the major goal fixed for the year by the Economic Commission for Africa. 38/ Similarly, establishment of "national focal points" for action was among the objectives of the International Year of Shelter for the Homeless. 39/

19. The establishment of national-level indigenous agencies is a requirement of both ILO Conventions No. 107 and 169, but this in itself is not necessarily helpful. Indigenous peoples themselves would be suspicious of participating in national-level boards or commissions which could be used to displace genuine grassroots indigenous organizations, and to legitimize government actions. A more meaningful approach would be to support the development of indigenous peoples' own organizations, and to encourage national meetings of indigenous peoples themselves, which could offer some policy direction to Governments. A year thus might concentrate on promoting national institutions of indigenous peoples.

F. State reports

20. In at least one instance the programme for a year included a monitoring mechanism. As part of the International Year of Shelter for the Homeless, States were invited to develop projects and to include information about them in their annual reports to the Commission on Human Settlements. 40/ A similar arrangement using the Working Group on Indigenous Populations may be considered, as a first step towards the monitoring role it may some day play

in relation to the Universal Declaration of Indigenous Rights. The machinery already exists in the form of notes verbales annually circulated to Governments and specialized agencies for information relevant to the work of the Working Group.

G. United Nations operational programmes

21. Some years have included measures for strengthening related United Nations bodies and programmes. The International Year of Shelter for the Homeless called on specialized agencies to review their own policies and programmes, for consistency with the aims and principles of the Year. 41/ The United Nations Decade of Disabled Persons likewise appealed to the United Nations operational programmes to "take into consideration the needs" of the target group and to strengthen their administrative capabilities in that field. 42/

22. This could be a particularly useful approach for promoting indigenous rights. Implementation might take the form of asking each United Nations agency and body to report on the (i) compatibility of its existing programmes and procedures with evolving United Nations standards for indigenous rights, and (ii) measures taken to make programmes more accessible to, and oriented towards the needs of indigenous people.

H. National development planning

23. Some years have also called upon States to include special projects in national development plans and in their United Nations Development Programme country programmes. 43/ The International Year of the Child appealed to States to include children's needs as "an integral part of social and economic development plans". 44/ The International Year of Disabled Persons likewise asked States to "give higher priority to development assistance projects" for the target group. 45/ In the case of indigenous peoples, who also tend to be marginalized or excluded, and are often the victims rather than beneficiaries of development projects, States should make explicit provisions, in their national development strategies, for special indigenous projects. Incentives could be offered through a "demonstration" programme, as suggested above. There is a legal basis for this, too, in article 7 (2) of ILO Convention No. 169.

I. Increased participation

24. Previous years have included activities aimed at increased consultation with target-group non-governmental organizations, 46/ direct participation of target groups and of their organizations in United Nations activities for the year, 47/ and increased employment of members of the target group by United Nations agencies. 48/ All three approaches are especially appropriate for an indigenous year, because they would result in their lasting involvement and empowerment within the United Nations system.

J. Voluntary funds

25. International years have increasingly relied upon voluntary contributions to finance their activities. In most instances the General Assembly has established a temporary voluntary fund for the management of contributions. 49/ For the International Year of Peace it also arranged a pledging conference. 50/

The existing United Nations Voluntary Fund for Indigenous Populations could be given an expanded mandate by the Assembly - an appropriate use of expertise and confidence in the current board of trustees of the Fund.

IV. PLANNING AND CO-ORDINATION

26. As a general rule, the Secretary-General has been asked to prepare a draft programme of action for a proposed international year, in consultation with the specialized agencies and relevant non-governmental organizations. 51/ States have sometimes been invited to make specific proposals for activities, 52/ and in some cases special debates on the draft programme have been scheduled in the Assembly, 53/ or in ECOSOC. 54/ In other cases the Assembly has established an advisory committee made up of States appointed by the Chairman of the Third Committee, 55/ inviting other States and relevant non-governmental organizations to participate as observers. 56/ Advisory committees have been encouraged in turn to attend related United Nations meetings as a basis for co-ordination. 57/ With regard to an indigenous year a different approach, using the expertise of the Sub-Commission, should in principle prove more economical.

27. United Nations regional commissions and the specialized agencies have often been asked to adopt their own programmes of action. 58/ In some instances, moreover, the General Assembly has designated a lead United Nations organization or agency, for example UNESCO for International Literacy Year, 59/ and UNICEF for the International Year of the Child. 60/ Both measures should be pursued for the indigenous year. Involving a wider range of United Nations organs in the promotion of indigenous rights and development should be a major aim of the year; co-ordination and initiative is also desirable. The Working Group and Centre for Human Rights would seem obvious as lead agencies. However, since both are fairly low-level in the United Nations system, the programme of action must describe their role and mandate very clearly, and request the co-operation of other bodies.

28. In addition to lead United Nations agencies, some years have relied on a host country, at least for convening pivotal conferences. The host country for the International Women's Year was Mexico, while Argentina hosted the focal conference of the International Year of Disabled Persons. 61/ There is some feeling among diplomats that having a host country helps ensure political support for the Year - although Mexico complains privately that it was a terrible administrative and financial headache. For an indigenous year, a Latin American host would seem logical since 90 per cent of all of the Western Hemisphere's indigenous peoples live there, but concerns over cost will be an obstacle. A possible alternative might be to work through the OAS and its Inter-American Indian Institute, although the problem there is that neither body has effective consultative arrangements with indigenous non-governmental organizations, as is the case with the United Nations and ILO. However, lack of a host should not stand in the way of proceeding with the Year.

29. Previous years generally made use of national co-ordinating committees, 62/ chiefly to implement national-level activities, and consult with national non-governmental organizations. The International Youth Year also called for the "active and direct participation of youth organizations" in national-level planning and activities, 63/ a participatory approach which certainly should be an element of an indigenous year as well.

V. EVALUATION AND FOLLOW-UP

30. There has been relatively little in the way of analysis of the concrete results of previous international years or decades, as opposed merely to compilations of replies to notes verbales on the activities undertaken by States, specialized agencies and non-governmental organizations. One of the exceptions, however, has been the evaluation of the Second Decade to Combat Racism and Racial Discrimination, recently completed by Asbjorn Eide for the Sub-Commission. 64/

31. A comprehensive plan for following up on the International Youth Year was adopted in General Assembly resolution 40/14 of 18 November 1985, based on recommendations of the United Nations Advisory Committee for that Year. Major recommendations included:

(a) The continuation of national committees;

(b) United Nations programmes and specialized agencies to take up one project on youth yearly in co-operation with relevant non-governmental organizations;

(c) The Commission on Social Development to examine youth issues on a regular basis;

(d) "Improving the active use" of communication between the United Nations and national-level youth organizations;

(e) Inviting Governments to include youth representatives in their delegations to international meetings.

It would seem wise to include in the programme for an indigenous year express provision for a follow-up conference to assess the results of the year and propose continuing action by the United Nations and Member States.

32. Two key elements of past international year programmes merit special consideration: participation and the establishment of national institutions. Both have high potential for producing lasting changes and should probably count highest among the aims of a year.

33. Participation of members and national-level organizations of the target group in the planning, activities, and evaluation of the year should definitely extend beyond accredited non-governmental organizations to more grassroots organizations. It should involve them more fully in both the United Nations system and national government, and should include recruitment into the United Nations civil service. National institutions can strengthen participation further by providing meeting-grounds for representatives of the target group and government decision-makers, giving a very concrete form of empowerment. If a year can effect these kinds of procedural changes in both State and multilateral structures, it will have had a genuinely practical result.

Notes

1/ General Assembly resolution 3170 (XXVIII), 17 December 1973.

2/ General Assembly resolution 35/424, 5 December 1980, approving ECOSOC resolution 1980/67 of 25 July 1980.

3/ ECOSOC resolution 1987/42, 28 May 1987.

4/ General Assembly resolution 42/51, 30 November 1987.

5/ General Assembly resolution 31/169, 21 December 1976.

6/ UNESCO doc. 132 EX/129, 28 September 1989.

7/ General Assembly resolution 3406(XXX), 28 November 1975.

8/ General Assembly resolution 31/169, 21 December 1976.

9/ General Assembly resolution 31/123, 16 December 1976; General Assembly resolution 34/154, 17 December 1979, see also General Assembly resolution 42/58, 30 November 1987 (United Nations Decade of Disabled Persons).

10/ General Assembly resolution 35/126, 11 December 1980.

11/ General Assembly resolution 42/13, 28 October 1987.

12/ "Development of public information activities in the field of human rights", A/43/711, 18 October 1988.

13/ General Assembly resolution 3010(XXVII), 18 December 1972.

14/ General Assembly resolution 35/126, 11 December 1980.

15/ General Assembly resolution 31/123, 16 December 1976.

16/ General Assembly resolution 37/221, 20 December 1982.

17/ General Assembly resolution 31/169, 21 December 1976.

18/ General Assembly resolution 42/58, 30 November 1987.

19/ General Assembly resolution 31/123, 16 December 1976.

20/ "Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace", A/CONF.116/28/Rev.1 (1985), paras. 77 through 92.

21/ General Assembly resolution 34/154, 17 December 1979.

22/ A/AC.232/5, 7 September 1989.

23/ "Measures and activities undertaken in connection with the International Women's Year", A.10263, 2 October 1975.

Notes (continued)

24/ General Assembly resolution 43/91, 8 December 1988, para. 9.

25/ General Assembly resolution 43/128, 8 December 1988, para. 5.

26/ ECOSOC resolution 1988/35 of 27 May 1988.

27/ International Year of Peace, General Assembly resolutions 38/56, 7 December 1983 and 39/10, 8 November 1984.

28/ United Nations Decade of Disabled Persons, General Assembly resolution 42/58, 30 November 1987.

29/ United Nations Decade of Disabled Persons, General Assembly resolution 42/58, 30 November 1987.

30/ "Measures and activities undertaken in connection with the International Women's Year", A/10263, 2 October 1975.

31/ "Implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination", A/44/595, 4 October 1989.

32/ See Sub-Commission decision 1989/109, 1 September 1989.

33/ Sub-Commission resolution 1989/36, 1 September 1989.

34/ Sub-Commission resolution 1989/36, 1 September 1989.

35/ General Assembly resolution 37/221, 20 December 1982.

36/ General Assembly resolution 35/133, 11 December 1980.

37/ General Assembly resolution 3725(XXIX), 10 December 1974.

38/ ST/EFA/Ser.B/6/Add.1, reproduced in UNIFO, Meeting in Mexico: The Story of the World Conference of the International Women's Year (United Nations: New York, 1975).

39/ General Assembly resolution 37/221, 20 December 1982.

40/ General Assembly resolution 40/203, 17 December 1985.

41/ General Assembly resolution 37/221, 20 December 1982.

42/ General Assembly resolution 42/58, 30 November 1987.

43/ International Women's Year, General Assembly resolution 3275 (XXIV), 10 December 1975; United Nations Decade of Disabled Persons, General Assembly resolution 42/58, 30 November 1987.

44/ General Assembly resolution 31/169, 21 December 1976.

45/ General Assembly resolution 35/133, 11 December 1980.

Notes (continued)

46/ United Nations Decade of Disabled Persons, General Assembly resolution 42/58, 30 November 1987.

47/ International Year of Disabled Persons, General Assembly resolution 35/133, 11 December 1980; also International Youth Year, General Assembly resolution 37/48, 3 December 1982.

48/ United Nations Decade of Disabled Persons, General Assembly resolution 42/58, 30 November 1987; "Measures and activities undertaken in connection with the International Women's Year", A/10263, 2 October 1975.

49/ International Women's Year, General Assembly resolution 3275 (XXIV), 10 December 1975; International Year of the Child, General Assembly resolution 31/169, 21 December 1976; International Year of Shelter for the Homeless, General Assembly resolution 37/221, 20 December 1982; United Nations Decade of Disabled Persons, General Assembly resolution 42/58, 30 November 1987.

50/ General Assembly resolution 39/10, 8 November 1984.

51/ International Year of the Child, General Assembly resolution 3406 (XXX), 28 November 1975; General Assembly resolution 34/154, 17 December 1979; International Youth Year, General Assembly resolution 35/126, 11 December 1980.

52/ International Year of Peace, General Assembly resolution 39/10, 8 November 1984.

53/ International Year of the Child, General Assembly resolution 32/109, 15 December 1977.

54/ International Year of Shelter for the Homeless, General Assembly resolution 40/203, 17 December 1985.

55/ International Year of Disabled Persons, General Assembly resolution 32/133, 16 December 1977; International Youth Year, General Assembly resolution 34/154, 17 December 1979.

56/ International Youth Year, General Assembly resolution 35/126, 11 December 1980.

57/ International Youth Year, General Assembly resolution 35/126, 11 December 1980.

58/ E.g., the International Year of Disabled Persons, General Assembly resolution 35/133, 11 December 1980.

59/ General Assembly resolution 42/104, 7 December 1987.

Notes (continued)

60/ General Assembly resolution 31/169, 21 December 1976.

61/ General Assembly resolution 35/133, 11 December 1980.

62/ International Year of Disabled Persons, General Assembly resolution 35/133, 11 December 1980; International Youth Year, General Assembly resolution 38/22, 22 November 1983.

63/ General Assembly resolution 37/48, 3 December 1982.

64/ E/CN.4/Sub.2/1989/8 and Add.1, 11 July 1989.

ANNEXES

Annex I

LEGISLATIVE AUTHORITY FOR RECENT INTERNATIONAL YEARS

1975 International Women's Year: General Assembly resolution 3010 (XXVII), 18 December 1972;

1979 International Year of the Child: General Assembly resolution 31/169, 21 December 1976;

1981 International Year for Disabled Persons: General Assembly resolution 31/123, 16 December 1976;

1985 International Youth Year: Participation, Development, Peace: General Assembly resolution 34/151, 17 December 1979;

1986 International Year of Peace: General Assembly resolution 40/3, 24 October 1985;

1987 International Year of Shelter for the Homeless: General Assembly resolution 37/221, 20 December 1982;

1990 International Literacy Year: General Assembly resolution 42/104, 7 December 1987.

Annex II

DRAFT PROGRAMME OF ACTIVITIES FOR AN INTERNATIONAL YEAR FOR INDIGENOUS RGHTS

1. The Working Group on Indigenous Populations should be encouraged to complete the text of a draft Universal Declaration of Indigenous Rights by its eleventh session, in 1991, so that the draft Declaration can be considered by the General Assembly at its forty-seventh session in 1992, and be proclaimed at the beginning of the international year. The Declaration would serve as an overall theme for the Year, and as a guide for all United Nations system activities.

2. The following official United Nations observances would set the general tone for activities under the International Year for Indigenous Rights:

(a) A formal opening-day ceremony by the Secretary-General in New York, during the forty-seventh session of the General Assembly;

(b) A formal day of observance during the fiftieth session of the Commission on Human Rights, in Geneva;

(c) Issuance of commemorative stamps at New York, Geneva and Vienna by the United Nations Postal Administration, on the theme of "indigenous people-indigenous rights".

3. The following projects and activities would be undertaken by the Department of Public Information, in co-operation with the Centre for Human Rights and indigenous non-governmental organizations:

(a) Publication and dissemination of a poster series, highlighting the global diversity of indigenous peoples, and priority issues for indigenous people in the field of human rights (land, environment, culture);

(b) Preparation and publication, in at least three official languages (English, French, Spanish), of a 36-page handbook for indigenous people on relevant United Nations human rights bodies, instruments and procedures;

(c) Publication of personalized copies of both the Universal Declaration of Human Rights and the Universal Declaration of Indigenous Rights in at least 10 major indigenous languages such as Quechua, Guarani, Cree, Maori and Sami;

(d) Production and wide distribution of at least one special programme in the DPI radio series, aimed at non-indigenous audiences;

(e) Production and distribution of a 20-minute videotape on the United Nations and indigenous rights, targeted on indigenous audiences, and designed to be dubbed in indigenous languages.

4. The following projects and activities would be undertaken by the Centre for Human Rights:

(a) Organizing regional workshops in the Americas, Asia and Europe for indigenous organizations, responsible government officials and the secretariats of regional intergovernmental organizations on the international instruments applicable to indigenous people and practical means for implementing them;

(b) Convening a technical meeting with professional staff of the Centre for Science and Technology for Development, the Centre for Technical Co-operation for Development, the Centre for Transnational Corporations, and the United Nations Development Programme, and with indigenous non-governmental organizations, to consider practical means of integrating indigenous rights norms in operational activities for development;

(c) Convening a technical meeting with professional staff of the Centre for Social Development on incorporating relevant statistical data on indigenous people in future Reports on the World Social Situation;

(d) Convening a meeting of the chairs of the treaty bodies in the field of human rights, to consider the extent to which new norms on indigenous rights can be reflected usefully and properly in their work under existing instruments;

(e) Convening special regional sessions of the Working Group on Indigenous Populations, in addition to its regular 1993 session, for the purpose of better publicizing the work of the United Nations in this field, and strengthening indigenous participation in activities of the Working Group.

5. Organs and specialized agencies of the United Nations would be requested to meet with technical representatives of indigenous non-governmental organizations for the purpose of strengthening consultative procedures, and increasing indigenous participation in their operational activities. Priority should be given to: United Nations Environment Programme (UNEP); United Nations Centre for Human Settlements (HABITAT); International Labour Organisation (ILO); World Health Organization (WHO); Food and Agriculture Organization (FAO); United Nations Children's Fund (UNICEF); United Nations Educational, Scientific and Cultural Organization (UNESCO). It should be noted that the International Labour Organisation has already taken an initiative in this direction, which could serve as a model for indigenous participation in the regular activities of other specialized agencies.

6. Regional intergovernmental organizations should be invited to convene meetings with indigenous organizations to develop better consultative arrangements and indigenous participation in human rights programmes as well as operational activities at the regional level.

7. Although the situation in Africa is somewhat different, there are important parallels between the historical experience and contemporary situations of Africans and indigenous peoples, and this suggests the usefulness of a meeting, in 1993 or earlier, between indigenous organizations and the Organization of African Unity, on institutionalizing technical co-operation in the fields of economic and social development.

8. To augment official projects and activities, the Secretary-General should invite interested Governments and non-governmental organizations to propose appropriate activities at the regional and national levels, which may be

endorsed, without financial implications, by the United Nations. In addition, the Voluntary Fund for Indigenous Populations should be authorized to receive, and disburse, contributions from Governments, intergovernmental and non-governmental organizations, for specific projects during the International Year which are approved by the Trustees and by the Secretary-General.

9. Indigenous non-governmental organizations should be asked to contribute technical expertise in support of these activities, in particular translations into indigenous languages, and artwork for official posters, stamps and publications. Preference should also be given to indigenous organizations and professionals where contractual services must be procured by the Secretary-General.

10. In accordance with Part IV of the Economic and Social Council's guidelines for future international years, which require a follow-up evaluation, it is suggested that the Council invite interested Governments, intergovernmental and non-governmental organizations, and specialized agencies, to submit written summaries of their activities during the International Year, and the measures they contemplate taking in the future to promote indigenous rights, by 1 June 1994, with the aim of producing an analytical summary for review by the General Assembly at its forty-ninth session.

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Agenda item 15

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Report of the Working Group on Indigenous Populations on its eighth session

Chairman/Rapporteur: Ms. Erica-Irene A. Daes

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INTRODUCTION

Mandate

1. The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982, and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commmission to establish annually a working group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the final report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martinez Cobo, on the Study of the Problem of Discrimination against Indigenous Populations (E/CN.4/Sub.2/1986/7 and Add.1-4);

(b) Give special attention to the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and the differences in the situations and aspirations of indigenous peoples throughout the world.

2. In addition to the review of developments and the evolution of international standards which are separate items on the Working Group's agenda, the Group has over the years considered a number of other issues relating to indigenous rights. Reports by the Special Rapporteur of the Sub-Commission, Mr. Miguel Alfonso Martínez, on the study of treaties, agreements and other constructive arrangements between States and indigenous peoples are thus a separate item on the agenda. The Commission on Human Rights, in resolution 1990/62, has also authorized the Working Group and the Sub-Commission to consider ways and means of broadening the scope and activities of the United Nations Voluntary Fund for Indigenous Populations, and to submit recommendations to the Commission at its forty-seventh session.

Participation in the session

3. By decision 1989/113 of 1 September 1989, the Sub-Commission decided on the following composition of the Working Group at its eighth session: Mr. Miguel Alfonso Martínez, Ms. Judith Sefi Attah, Ms. Erica-Irene A. Daes, Mr. Ribot Hatano, and Mr. Danilo Türk. In the absence of Ms. Attah, the outgoing Chairman of the Sub-Commission in consultation with the members of the Working Group appointed Ms. Christy Mbonu, the alternate of Ms. Attah on the Sub-Commission, to serve on the Group at its eighth session.

4. The session was attended by Mr. Alfonso Martínez, Ms. Daes, Mr. Hatano, Ms. Mbonu and Mr. Türk.

5. The following States Members of the United Nations were represented by observers: Argentina, Australia, Bangladesh, Brazil, Canada, Cuba, Cyprus, Denmark, El Salvador, Finland, France, Greece, Guatemala, India, Indonesia, Japan, Myanmar, New Zealand, Nigeria, Norway, Peru, the Philippines, Portugal, Senegal, Sri Lanka, Sweden, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America, and Venezuela.

6. The Pan Africanist Congress of Azania was represented by an observer.

7. The International Labour Office and the Office of the United Nations High Commissioner for Refugees were represented by observers.

8. The official Aboriginal and Torres Strait Islander Commission of Australia was represented by observers.

9. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented by observers:

(a) Indigenous Peoples

Four Directions Council, Grand Council of the Crees (Quebec), Indian Council of South America (CISA), Indian Law Resource Center, Indigenous World Association, International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Services Secretariat, National Indian Youth Council, Nordic Saami Council, and the World Council of Indigenous Peoples.

(b) Other

Amnesty International, Anti-Slavery Society for the Protection of Human Rights, Baha'i International Community, Commission of the Churches on International Affairs (World Council of Churches), Friends World Committee for Consultation, International Commission of Jurists, International Federation of Human Rights, International Fellowship of Reconciliation, International Human Rights Internship Program, International League for the Rights and Liberation of Peoples, International Organization for the Elimination of All Forms of Racial Discrimination, International Work Group for Indigenous Affairs (IWGIA), Survival International, and World Federation of Methodist Women.

10. The following indigenous peoples' nations and organizations, as well as other organizations and institutions, were represented at the session and furnished information to the Working Group with its consent.

(a) Indigenous peoples' nations and organizations

Aboriginal Nations, Ainu Association of Hokkaido, Alfobigi, Asociacion Indigena de la Republica Argentina, Asociacion Interetnica de Desarollo de la Selva Peruana, Asociacion de Parcialitates Indegenas, Assembly of First Nations, Assembly of Minority Peoples of the Soviet North, Aucan Mapuche, Central Land Council, Centro Cultural de Javenes Aymaras de Bolivia, Chefornak Traditional Elders Council, Yupik Alaska, Chitakolla Center, Chirapaq, Comite Campesino del Altiplano Cakchiquel Guatemala, Comite de Unidad Campesina de Guatemala, Comite Exterior Mapuche, Confederacion Indegena del Oriente Boliviano, Committee to Defend Black Rights (Australia), Confederacion de Nacionalides Indegenas del Equador, Congreso General Guaymi, Conseil des Atikameku et des Montagnais, Consejo Nacional de Pueblos Indigenas de Chile,

Consejo Nacional Indio de Venezuela, Consejo Regional Indigena del Tolima, Coordinadora Nacional de Pueblos Indios, Coordinadora de Organiciones de la Cuenca Amazonica, Cordillera Peoples Alliance of the Philippines, Corporacion Rupai, Gull Bay Indian Band, Haudenosaunee, Hopi Tribe, Indian Council of Indigenous and Tribal Peoples, Independent First Nations Alliance, Julalikari Council, Lil'wat Nation, Lokonon of Surinam, Mapuche, Maori Aotearoa-Ngati Te Ata-Te Rununga O Ngati Porou-Ngato Tuara-Te Runanga O Ngati Awa, Mohawk Nation, Mouvement Tupay Katari (Bolivie), Movimiento Kuna, M.R.T.K.L. Quechuz Aymara Bolivie, National Aboriginal Professional and Businesswomen's Association, National Coalition of Aboriginal Organizations, Navajo Nation, Northern Land Council, Onondaga Nation, Organizacion de Mujeres Kollasuyu (OMAK). Secretariat for Aboriginal and Islander Childcare, Seed India, Seneca Nation, Toledo Maya Cultural Council of Belize, Treaty Six Chiefs on behalf of Treaty Six Nations Canada, Tuscarira Nation, Union of New Brunswick Indians, Vedda Community, Village of Oraibi, and Yarawato of Surinam.

(b) Other organizations and groups

Aboriginal Law Centre of the University of New South Wals, Arbeitskreis Indianer Nord-Amerikas (AKIN), Association des Etudiants et Stagiaires Kanacks, Association Fighting for the Aquisition of the Human Rights of Koreans in Japan, Association for the Support and Defence of Bedouin Rights in Israel, Bangladesh Society for the Enforcement of Human Rights, Big Mountain Aktionsgruppe, Burma Peace Foundation, Centre Documentazione Firenze, Centre of Concern for Child Labour, Cinq Cents Ans de Resistance, Comité Belge-Amerique Indienne, Coordination Workgroup Indigenous People, Democratic Alliance Burma, Diffusion Inti, Diplomacy Training Program of the University of New South Wales, Documentation Center for Indigenous Peoples (DOCIP), Fondazione Internazionale Lelio Basso Peril Diritto e la Liberazione Dei Populi, Foundation 12 Oktober Manifest, German Burmese Association, Gesellschaft für Bedrohte Völker, Homeland Mission 1950 for the South Moluccas, Human Rights Commission of New Zealand, Human Rights Fund for Indigenous Peoples, Incomindios Schweiz, Institut für Internationale Zusammenarbeit, International Scholars for Indigenous Populations, International Service for Human Rights, International Work Group for Indigenous Peoples, Lakota Stichting, Museu Goeldi Brazil, Nouvelle Planete, Rainforest Information Centre of Australia, Shimin Gaikou Center, Society for Threatened Peoples, Sarawak, Sol Trois (Suisse), Traditions Pour Demain, United Church of Christ in the Philippines, Verts les France, West Australian Aboriginal Media Association, West Papua Peoples Front, and Working Group on Indigenous Peoples (W.I.P., the Netherlands).

11. In addition to the above-mentioned participants, several individual scholars, experts and observers attended the meetings.

Election of Officers

12. At its first meeting on 23 July 1990, for the sixth time, the Working Group by acclamation re-elected Ms. Erica-Irene A. Daes as Chairman/Rapporteur.

Organization of work

13. At its first meeting, the Working Group considered and adopted the provisional agenda, contained in document E/CN.4/Sub.2/AC.4/1990/L.1.

14. According to a proposal made by the Chairman/Rapporteur, Ms. Erica-Irene A. Daes, the Working Group decided to institute three informal and open-ended drafting groups in the first week of its session with the basic aims of facilitating and accelerating the work on the draft Universal Declaration on the Rights of Indigenous Peoples and with the view of adopting some of the principles in first reading. Subsequently, three informal drafting groups were established on 23 July 1990:

(a) The first informal drafting group, under the chairmanship of Mr. Miguel Alfonso Martínez, held six meetings from 23 to 27 July 1990 to consider the provisions on land and resources contained in the Preamble and Parts III and IV of the first revised text of the draft Universal Declaration (Annex II, E/CN.4/Sub.2/1989/36);

(b) The second informal drafting group, under the chairmanship of Mr. Danilo Türk, held seven meetings from 23 to 27 July 1990 to consider Part V of the draft Declaration and pertinent preambular paragraphs relating to political rights and autonomy;

(c) The third informal drafting group, under the chairmanship of Ms. Erica-Irene A. Daes, held 5 meetings from 23 to 26 July 1990 to examine the principles contained in Parts I, II, VI and VII of the draft Declaration as well as the relevant provisions contained in the Preamble.

15. The Working Group held 11 public meetings from 23 July to 3 August 1990. The Working Group decided to devote at least four plenary meetings to item 4 on standard-setting activities, four plenary meetings to item 5 on review of developments, one plenary meeting to item 6 concerning on-going work by the Special Rapporteur of the Sub-Commission on his study of treaties, agreements and other constructive arrangements between States and indigenous populations, and one plenary meeting to item 7 on other matters. In accordance with established practice, the Working Group continued to meet in private during the subsequent session of the Sub-Commission for the purpose of finalizing this report and adopting the decisions and recommendations contained in Annex I.

Documentation

16. The following documents were made available to the Working Group:

Provisional agenda (E/CN.4/Sub.2/AC.4/1990/L.1);

Materials received from the Governments of Argentina, Australia, Bangladesh, Brazil, Canada, China, Finland, Papua New Guinea and Venezuela (E/CN.4/Sub.2/AC.4/1990/1, Corr.1 and Add. 1-3, E/CN.4/Sub.2/AC.4/1990/4);

Materials received from the United Nations organs, specialized agencies and other intergovernmental organizations: Centre on Transnational Corporations, International Labour Office, United Nations Educational, Scientific and Cultural Organization, United Nations Population Fund, and World Health Organization (E/CN.4/Sub.2/AC.4/1990/2 and Add.1, E/CN.4/Sub.2/AC.4/1990/6);

Materials received from non-governmental organizations: Anti-Slavery Society for the Protection of Human Rights, Indian Council of South America, Indian Law Resource Center, Inter-Parliamentary Union, The Law Association for Asia and the Pacific, National Indian Youth Council, the Native Council of Canada, and World Council of Churches (E/CN.4/Sub.2/AC.4/1990/3 and Add.1-2, E/CN.4/Sub.2/AC.4/1990/5);

First revised text of the draft Universal Declaration on the Rights of Indigenous Peoples prepared by Ms. Erica-Irene A. Daes, and analytical compilation of observations and comments received pursuant to Sub-Commission resolution 1988/18 (E/CN.4/Sub.2/1989/33 and Add.1-2);

Report of the Working Group on Indigenous Populations on its seventh session, (E/CN.4/Sub.2/1989/36);

Analytical commentary on the draft Universal Declaration on the Rights of Indigenous Peoples prepared by the Chairman/Rapporteur, Ms. Erica-Irene A. Daes (E/CN.4/Sub.2/1990/39);

Reports of the three informal drafting groups established to consider the first revised text of the draft Universal Declaration on Indigenous Rights (E/CN.4/Sub.2/AC.4/1990/7 and Add.1-2);

Report of the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States (E/CN.4/1989/22);

Working paper on possible United Nations activities for an International Year for Indigenous Rights submitted by Mr. Asbjorn Eide and Ms. Christy Mbonu (E/CN.4/Sub.2/1990/41);

Fact Sheet No. 9 entitled The Rights of Indigenous Peoples published by the United Nations Centre for Human Rights, Geneva, May 1990.

Adoption of report

17. The Working Group on 24 August 1990 unanimously adopted the present report.

I. GENERAL DEBATE

18. The Deputy Director of the Centre for Human Rights, Mr. Kwadwo F. Nyamekye, made an opening statement in which he explained the Working Group's mandate, the extension of the Working Group's session to two weeks and the many on-going activities in the field of indigenous rights falling within the Group's agenda.

19. Following her re-election for the sixth time as Chairman/Rapporteur of the Working Group, Ms. Erica-Irene A. Daes, in her introductory statement, described the tasks awaiting the Group's attention during the two-week long session. She requested everybody to respect the right of all participants to speak by keeping their interventions as brief and concise as possible.

20. Prior to and during the Working Group's session, the Secretariat received a considerable volume of reports, studies and other written materials of governmental, non-governmental and indigenous origin, which was made available to the members of the Working Group. It was stated by members of the Group that the information received was of great value to their work, especially with regard to the Group's standard-setting activities.

21. Mr. Robert Tickner, the Minister for Aboriginal Affairs of Australia, addressed and attended the meetings of the Working Group during its eighth session. The Chairman/Rapporteur expressed her gratitude to the Minister for his active participation and positive contribution to the work of the Working Group.

22. Ms. E.A. Gaer, Member of the Supreme Soviet of the Union of Soviet Socialist Republics and Chairman of the Supreme Soviet's Subcommission on the Problems of the Small Peoples of the USSR, addressed the Working Group during its eighth session. The Chairman/Rapporteur welcomed representatives of the Government and indigenous peoples of the Soviet Union who were now attending a session of the Working Group for the first time and expressed her desire for continued fruitful co-operation.

23. The Chairman/Rapporteur expressed her appreciation to the United Nations Department of Public Information and to the film crew present at the session for their work on a documentary film about human rights with a focus on the rights of indigenous peoples. Referring to resolutions of the Sub-Commission and of the Commission on Human Rights and to Fact Sheet No.9 on the Rights of Indigenous Peoples, recently published by the Centre for Human Rights, she expressed her appreciation and stated that dissemination of information about indigenous rights was of great value to the Working Group and its activities.

24. In her closing statement the Chairman/Rapporteur, on behalf of the Working Group, expressed particular appreciation to the International Service for Human Rights and the Indigenous Centre for Documentation, Research and Information (DOCIP) for the technical secretariat services they had provided to indigenous representatives throughout the session.

II. REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLES

25. In her introductory statement on this item the Chairman/Rapporteur, Ms. Erica-Irene A. Daes, welcomed all the participants and invited the observers of both Governments and indigenous peoples to submit information about the present situation in their countries. A large number of governmental observers and indigenous and non-governmental organizations made exhaustive reports with highlights on a variety of improvements achieved and/or problems still persisting.

26. The most common issues raised before the Working Group were the right of self-determination, autonomy and self-government; treaty rights; the restoration of territorial, land and resources rights; deforestation, depletion of natural resources and other environmental concerns; transmigration and unemployment; loss of and forced changes in traditional lifestyles; the unremitting consequences of assimilationist policies; preservation of indigenous languages and cultures; lack of medical treatment and facilities; and other alleged human rights problems, including extrajudicial killings and disappearances of indigenous peoples. Many of the issues brought up have been extensively described in previous reports of the Working Group and need not be repeated; others and especially those relating to positive developments, dialogue between the parties and pressing concerns are summarized in the subsequent paragraphs.

27. Government observers present at the session provided the Working Group with detailed information about the legal status and factual circumstances of their indigenous peoples, including the protection of their human rights. In several countries, it was stated, indigenous peoples enjoy the same rights and freedoms as are available to all citizens and, in some cases, additional benefits such as exemption from income tax and free medical benefits. In one country, indigenous programmes are administered by the indigenous peoples themselves; in another indigenous peoples run their own local governments; in still another country, an indigenous assembly was recently inaugurated by the Head of State; in another country a ministry of special areas has been designated to deal with all issues pertaining to indigenous peoples; and in yet another country an indigenous parliament has functioned for over 15 years. In one country, indigenous peoples have set up a national congress which gives the indigenous peoples a unified voice in dealing with the Government on their rights and development.

28. As to one country both the Government observer and the indigenous peoples' representative agreed that the situation of their own indigenous peoples was very similar to that of indigenous peoples in the rest of the world: native languages vanishing, the dying out of traditional artisanal skills, the disappearance of traditional hunting and fishing grounds, the threat of immigrant populations to the preservation of traditional cultures, the lack of political representation of indigenous peoples, the dramatic decrease in life expectancy, uncontrolled industrial development and forced abandonment of traditional activities. Last year, the authorities had instituted a special parliamentary body to study the problems of indigenous peoples and this body had already prepared a draft law on development of small nations which is currently being discussed with the indigenous peoples

themselves. The governmental observer invited all observers present at the Working Group to share their experiences and to comment on the draft law. Recently, a regional indigenous organisation expanded its membership to include two additional groups from this country. For the first time in history, indigenous peoples residing in four different countries, divided by political borders which they did not create, can share their culture, aspirations and ideals among themselves.

29. One Government observer recognized the fact that indigenous peoples in his country still suffer from continuing disadvantages and injustices but expressed the hope that with the recent establishment of an aboriginal commission, an unprecedented opportunity for their indigenous peoples to determine and carry out their own policy had been created. An observer from this commission expressed the opinion that the commission is the most truly indigenous organization ever established in that country leading to maximum participation of indigenous peoples in developing and implementing Government policies and to the promotion of self-management by indigenous peoples. A number of aboriginal observers considered the commission a non-indigenous bureaucratic structure imposed without consent and in no way a genuine attempt by the Government to address their demands for self-determination. Further problems were perceived, it was said, in relation to the imposition of procedures for the selection of members and the prescription of regions and zones without regard to traditional territorial boundaries.

30. Indigenous observers issued a universal call for the right to self-determination and indigenous government within their territories. Many representatives mentioned that they are not even consulted in policy- and decision- making and in the implementation of those decisions which affect their life and destiny, such as development programmes and environmental questions. In addition, several speakers complained about the disregard and disrespect of traditional ways of selection or identification of leaders which it was said, in some cases, constituted violation of treaties. The application of indigenous customary law was said to be an essential component in the preservation and protection of indigenous ways of life.

31. One aboriginal observer informed the Working Group about a regional seminar on decolonization which the United Nations Committee on the Granting of Independence to Colonial Countries and Peoples (Committee of 24) had held in May 1990 in Vanuatu. He told the Group that a non-governmental organization, speaking on behalf of many participants in the seminar, had made a statement drawing the Committee's attention to the on-going work of the Group and recommending that the Committee take note of the concerns of indigenous peoples. He further requested that the Committee send an observer to the Working Group's sessions.

32. As to positive developments, an observer Government and indigenous observers referred to a recent supreme court case. This case, it was said, ruled that the State cannot extinguish treaty and aboriginal rights without the consent of the peoples concerned and, by interpreting existing aboriginal rights, appeared to broaden the fiduciary duty of the State towards indigenous peoples. In another country, new legislation aimed at safeguarding the interests and well-being of its indigenous nations, including the right of choice in self-determination and sovereignty, gives reason to some observers to hope for a better future.

33. Concerning land rights, a Government observer stated that a treaty regarding the re-acquisition of traditional lands by aboriginal people is being worked out. Another country has recently agreed to land claim settlements providing indigenous groups with over 570,000 square kilometres of land, substantial cash compensation and decision-making roles in land management, resources development, environmental and other matters. In still another country, pending legislations proposes that all State forests would become the communal property of indigenous peoples. In another example, the settlement of land claims has proved to be very costly for indigenous peoples which is an ironic penalty considering that they have to pay for seeking the return of lands of which they had been illegally deprived. In one country, according to an indigenous representative, contrary to the laws on the return of land to indigenous peoples which had been passed under a previous Government, the best parts of those lands have in the meantime been taken by the new Government for the development of State projects. In another country, since 1981, over 100 indigenous communities have been able to claim back lands while other communities have had to cope with the influx of immigrants or national and transnational development projects that are carried out in their territories. One indigenous peoples' organisation alleged that, although the country's constitution provides for indigenous land rights, the Government is not complying with its own constitution and thus denying its indigenous peoples the lands to which they are entitled. Another indigenous organization referred to the promise made to the Working Group by a Government representative, in 1984, to introduce a uniform national land rights legislation.

34. Several indigenous organizations made reference to a situation in which, inter alia, the issue of land claims had led to a confrontation between indigenous people and law-enforcement officials. The Government and indigenous observers provided to the Working Group views and information concerning the background to this situation, including past efforts and recent developments in seeking a negotiated solution. On its own initiative, the Government observer undertook to keep informed the Chairman of the Working Group, as well as the Chairman of the Sub-Commission and the Secretary-General, of its efforts to ensure a peaceful, negotiated resolution of the situation, in a manner that respects the human rights of all persons concerned. For its part, the Working Group expressed the hope that all parties would conduct themselves in a manner conducive to the achievement of such a result.

35. Several indigenous peoples mentioned population transfers and forced relocation as a very serious problem. Such transfers of indigenous peoples mean the loss of their traditional lands and traditional ways of life with devastating consequences for their social and economic welfare. Deprivation of lands and ways of life leads to unemployment and exploitation as well as problems of health and housing. A joint statement by a few non-governmental organizations highlighted the negative impact of population transfers on indigenous cultures as they result in forcible removal, forced relocation and induced immigration. The reasons for the transfers are equally unacceptable as Governments may use them to counter claims to self-determination, to impose non-indigenous national cultures, and to facilitate the disposal of natural resources.

36. Unemployment among indigenous peoples was frequently mentioned. One Government observer expressed his concern about the disproportionate increase

in indigenous unemployment which had come about as a result of the restructuring of the country's economy, primarily because indigenous livelihood depended upon those sectors which had been marginalised, such as fisheries. Many indigenous organisations complained about the economic exploitation of their peoples who, after having been forced to leave their traditional lands, were now used as cheap and unskilled labour. One organisation underlined the right of indigenous peoples to live and to work in their tribal lands and urged Governments to make every effort to create new employment opportunities. In the view of this same organisation, costly welfare programmes had a crippling effect on indigenous peoples as opposed to assisting in their development.

37. Many indigenous organizations mentioned education as a way to avoid unemployment. Indigenous peoples suffer higher levels of illiteracy than the rest of the national populations and do therefore not have equal access to the labour market. The lack of adequate education was repeatedly brought up as the main reason for the loss of indigenous identities. Concern was also expressed about the lack of proper education for indigenous peoples. The curriculum is designed for the dominant cultures and the teachers are non-indigenous. This leads to the devaluation of indigenous cultures. Indigenous peoples should therefore demand a bi-lingual intercultural education with reference to their fundamental right to preserve and develop their own cultures. Although one Government has initiated a new indigenous education policy, it was stated that low priority for the programme had resulted in insufficient funding. Aboriginal peoples, it was said, are still mainstreamed into an educational system which does not cater for their special needs and cultural requirements causing the continued alienation of the majority of aboriginal students.

38. In one country a law is being drafted which authorizes indigenous peoples to use their mother tongue before the courts and in administrative procedures. In another country, statutory rules for the use of indigenous languages have been proposed with the aim of increasing the use of these languages in public settings. In yet another country, about half of the indigenous students takes classes in their aboriginal languages and six indigenous languages have been recognized as official languages. These developments conflict sharply with the prevailing situation in other countries where indigenous children reportedly learn their native tongues as foreign languages, if at all.

39. Numerous statements were made before the Working Group concerning the deteriorating health situation of indigenous peoples. Two Government observers expressed grave concern about the bad health situation of aboriginal peoples who had much shorter average life expectancies than other nationals. As a result, new strategies are being developed with strong emphasis on environmental health issues. Still another country is working on the removal of outsiders from areas traditionally occupied by indigenous peoples and on medical care programmes to fight diseases brought in by the aliens. An indigenous observer pointed out that treaties often guaranteed health rights and that it was therefore incorrect to refer to free medical benefits from the State.

40. Several indigenous representatives pointed out that, throughout the world, skeletal remains, burial artifacts and other cultural objects and properties are kept in museums, private collections and universities. Urgent requests for the continued and speedy repatriation of these remains were made. Although some properties had been repatriated, the progress was very

slow. A Government observer recognized the fact that the issue of returning skeletal remains was an important issue for aboriginal peoples and he informed the Working Group about an official agreement aiming at the development of a national position and strategy for the return of significant cultural material to the aboriginal peoples, in particular skeletal remains from overseas collections. The proposal was made by a number of indigenous representatives that the Chairman/Rapporteur should be requested to prepare a working paper on these issues for submission to the next session of the Working Group.

41. In the view of one organization, indigenous peoples' struggles had to be seen basically as disputes over the possession, control and use of territories, lands and resources. At present, indigenous peoples are exposed to land, water and air pollution and the general devastation of nature, caused by others and leading to deprivation of their traditional ways of life and subsistence. When they try to defend themselves and their rights, they may face the full force of the State apparatus, including military might. This view was shared by many indigenous peoples who claim that since time immemorial they had lived in harmony with nature. Their economies are based on modesty and mutual respect between mother earth and the peoples. This peaceful life had been disturbed by the coming of strangers whose individualism, methods of competition and interest in profits could not co-exist with indigenous ways of life.

42. A non-governmental organization urged that the United Nations Conference on Environment and Development, to be held in June 1992, as well as other intergovernmental fora, should recognize the right of indigenous peoples to continue to occupy, manage and use their traditional territories and respect the paramount role of indigenous peoples as owners and managers of their own lands and resources. One Government observer recognised that traditional indigenous approaches to land and environment can validly be applied in contemporary society, including the concept of guardianship which is now being employed for a major reform in his country's environmental administration and legislation. In this connection, one indigenous organization stated that it was working actively towards the establishment of a zone of peace in the Arctic.

43. In the context of the close relationship between indigenous rights and the environment there was frequent mention of the imposition of national development projects, such as the installation of hydro-electrical dams and construction of highways, which negatively affected the traditional lands and territories of indigenous peoples. One country is in the process of involving their aboriginal people in land use and development planning.

44. One indigenous organization drew the Working Group's attention to the situation of indigenous women who have so far not been afforded the necessary recognition and support by their own societies despite the fact that they carry much of the burden of the survival of generations of indigenous peoples through their work in the factories, the fields and the homes. They are considered unproductive because their work in the fields does not necessarily produce cash or profit and they often become the victims of sex trafficking and prostitution. They have always been regarded as second-rate citizens, they are invisible in history and they have not even been allowed control over their own bodies. Another indigenous representative stated that wife and child beating and sexual abuse was the consequence of unemployment and the deteriorating welfare of indigenous peoples.

45. Many organizations stated that indigenous peoples had increasingly become victims of human rights violations, terror and intimidation and threats of the same kind. Their leaders are persecuted, receive death threats or are being killed. Other organisations mentioned police brutality, appalling prison conditions, deaths in custody and discriminatory use of force in police operations, as well as the use of paramilitary police squads and military units to maintain order. In one country, in the last 10 years, 15,000 people had been killed or had disappeared, 80 per cent of whom were indigenous persons. Such institutional violence was said to be unacceptable and disappointment was expressed about the inability of the international community to put a stop to these gross and continuing violations. Reference was made to the flow of refugees caused by these or similar rights violations.

46. A representative of the International Labour Office provided the Working Group with information about ILO Convention No.169 (1989). So far, the Organization had received one ratification; a second one will bring the Convention into force. He emphasised that ILO Convention No.107 (1957) remains in force for those States which ratified it and have not yet ratified Convention No.169. The representative described the on-going supervision of Convention No.107, as well as technical assistance activities by ILO and by other organs in the United Nations system, and he was of the opinion that the time will come for more direct interaction between the Working Group and the technical services offered in this field. In this connection, he referred to a recent inter-agency coordination meeting called by the ILO, in which seven organs of the United Nations system had participated.

47. One Government observer stated that his country had ratified Convention No.169 on the understanding that it contained minimum standards and he suggested that Governments ought to seriously consider strengthening these standards further at the national level. Another country is withholding ratification pending the passing of national legislation relating to its indigenous peoples. Several indigenous observers expressed disappointment with the revised ILO Convention inasmuch as it did not fully and adequately respect indigenous demands. The Convention was challenged as paternalistic and oriented towards the interests of Governments. It did not, it was said, sufficiently require Governments to recognize indigenous rights to territory, land and resources and, furthermore, it did not properly recognize the crucial requirement of indigenous consent. Other indigenous representatives expressed support for the revised Convention and for the efforts of the ILO to promote and protect indigenous rights. They endorsed ratification by all States which have indigenous peoples within their borders and felt that respect for the Convention's provisions would improve the situation of indigenous peoples in most countries.

48. The members of the Working Group took note of the information they had received at this session on the subject of review of developments. They underlined the importance of this item in its own right as an invaluable contribution to the on-going standard-setting work. One member emphasized that all participants should be able to take active part in the discussions. He suggested that joint statements should be prepared in order to highlight special situations or problems as it would be useful for the Group to be aware of problems which are common to many indigenous peoples. The Chairman/Rapporteur explained that the Roma people or the Gypsies, and the promotion and protection of their rights, could fall within the mandate of the Working Group when the Roma were indigenous to the countries in which they live.

49. One member emphasized the value of a dialogue between indigenous peoples and their Governments and gave an example where both the Government and the indigenous people concerned made statements concerning the right to self-determination. The Working Group should encourage a dialogue on this and other points of mutual interest. The process of dialogue was as important as the result, and it was important for all parties to agree to give the Working Group more specific data as a basis for more detailed and analytical discussion. The importance of receiving information on positive achievements was underlined. One of the members of the Working Group proposed that the report should be organized on a country-by-country basis, especially if and when the information provided or the contribution to the dialogue were found to be wanting or in need of further clarification.

50. Another member of the Working Group elaborated further on the various aspects of a dialogue, welcoming the exchange of ideas and information. Dialogue in this forum had to be trilateral, involving the members of the Working Group, indigenous peoples, and the Governments concerned. The Chairman/Rapporteur underlined the trilateral nature of the dialogue. It was emphasized that the conduct of a dialogue was a clarification of the Working Group's mandate and not an extension of it. One of the indigenous organizations emphasized the need for dialogue and supported the idea of negotiations at the national level as well as at the international level and welcomed the opportunity to enter into a constructive debate. Other speakers suggested that in order to achieve substantial results, certain conditions and principles should be observed such as equality between Government and the indigenous people; adequate resources to support the process; monitoring by an independent international body; implementation of the final outcome by an impartial adjudicative body and provision for compensation and reparations. It was underlined that consensus about the standard-setting activities was also to a large degree dependent upon the utilization of the opportunity to enter into this trilateral dialogue. A few Government observers indicated their willingness to enter the process of such a dialogue.

III. EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS PEOPLES

51. At its first meeting, on 23 July 1990, in accordance with a proposal made by the Chairman/Rapporteur, the Working Group decided to establish three informal drafting groups to continue the elaboration of the draft Universal Declaration on the Rights of Indigenous Peoples based on the first revised text submitted by the Chairman/Rapporteur of the Working Group, Ms. Erica-Irene A. Daes (document E/CN.4/Sub.2/1989/36, annex I) and her analytical commentary on the draft Declaration (E/CN.4/Sub.2/1990/39).

52. The three informal drafting groups were established as follows: Informal Drafting Group I, under the chairmanship of Mr. Miguel Alfonso Martínez, to consider the provisions on land and resources contained in the Preamble and Parts III and IV; Informal Drafting Group II, under the chairmanship of Mr. Danilo Turk, to consider the provisions on political rights and autonomy contained in the Preamble and Part V; and Informal Drafting Group III, under the chairmanship of Ms. Erica-Irene A. Daes, to consider the provisions in the Preamble and Parts I, II, VI and VII of the first revised text.

53. At the 8th meeting of the Working Group, on 2 August 1990, the three Chairmen of the drafting groups introduced the reports on the work carried out in their respective groups. These reports (documents E/CN.4/Sub.2/AC.4/1990/7 and Add. 1 and 2) are reproduced in annexes to this report. In introductory statements, the Chairmen indicated that the work in their groups was based on three main sources: the first revised text of the draft Universal Declaration and the analytical commentary, both of which had been prepared by the Chairman/Rapporteur, and the extensive discussions carried on in the drafting groups themselves. All Chairmen emphasized the enormous contributions of many indigenous and governmental participants to their drafting work, and they expressed their deep regret that interpretation services had not been available for all the meetings of the Informal Drafting Groups, as well as their willingness to remedy that unfortunate situation at future sessions.

54. The Chairman/Rapporteur pointed out that the words "adopted" or "recommended" signified only that the provisions were agreed to by the participants in the respective Informal Drafting Groups for submission to the Working Group for its evaluation and consideration. She also stressed that the Working Group's report, containing all proposals and discussions concerning the first revised text, should be sent to Governments, indigenous peoples, intergovernmental organizations and non-governmental organizations for their written comments and suggestions. She emphasized that the current work was the beginning of the first reading of the draft Universal Declaration which would be followed by a second reading in the Working Group when the whole text had been considered in a first round.

55. A large number of comments were made in the three drafting groups and in plenary meetings of the Working Group. These observerations are summarized below. Unless otherwise noted, the paragraph numbers of the draft text follow the order of paragraphs contained in the first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples, as presented by the Chairman/Rapporteur.

Preambular paragraph 1

56. All three Informal Drafting Groups considered modifications of this provision. One member of the Working Group expressed a preference for the rewording by Informal Drafting Group I (E/CN.4/Sub.2/AC.4/1990/7, p.3, paras. 1-2) which divides this paragraph into two preambular paragraphs: one establishing the freedom and equality of indigenous peoples, the second recognizing their collective right to be different from all other peoples. He expressed hesitations about the rewording by Informal Drafting Group II (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.4) which makes no mention of international standards. This same member further suggested that the word "are" before "equal" should be deleted from preambular paragraph 1 by Informal Drafting Group I (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.1) to bring it into line with the language of the Universal Declaration on Human Rights, and operative paragraph 25 of the first draft Declaration. One governmental representative expressed the hope that the "right to be different" could be clarified so as to be consistent with the UNESCO Declaration on Race and Racial Prejudice and not to imply a policy of separation or apartheid.

Preambular paragraph 2

57. Only Informal Drafting Group I proposed a modification of this provision. A member of the Working Group expressed a preference for this proposed rewording (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.3) because it increased the breadth of the provision and avoided redundancy in the reference to "human groups".

Preambular paragraph 3

58. Informal Drafting Groups I and III considered modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.4, and Add.2, p.3, para.3). One member of the Working Group expressed a preference for the suggestion of Drafting Group I, if the word "spiritual" were deleted from the fourth line.

Preambular paragraph 3 bis (new)

Informal Drafting Group I proposed a new preambular paragraph covering demilitarization of indigenous areas (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.5). One Working Group member expressed his confidence that this provision should not induce strong opposition from any quarter. One indigenous representative stressed the importance of this provision for indigenous peoples throughout the world.

Preambular paragraph 4

59. Informal Drafting Group III omitted reference to this provision, and one member of the Working Group inquired whether, given that the Drafting Group was supposed to report on provisions which enjoyed broad support by participants, this omission should be taken to express a lack of consensus in this Drafting Group on preambular paragraph 4. This same member also commented that the modifications proposed by Drafting Group 1 (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.6) were acceptable except that the reference to "inalienable rights and fundamental freedoms, including their basic human rights and fundamental freedoms" was cumbersome. One indigenous representative suggested that an operative paragraph guaranteeing indigenous peoples the right to resist discrimination and oppression would give effect to this provision.

Preambular paragraph 5

60. Only Informal Drafting Group I proposed a modification of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.7). A member of the Working Group commented that these proposed modifications should give no grounds for opposition.

Preambular paragraph 6

61. Informal Drafting Groups I and III proposed slight modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.8; and Add.2, p.3, para.5). A member of the Working Group suggested the deletion of the word "adverse" before "distinction" and before "discrimination" in order to avoid arguments on the distinction between "favourable" and "adverse" discrimination.

Preambular paragraph 7

62. Both Informal Drafting Groups I and III proposed modifications to this provision (E/CN.4/Sub.2/AC.4/1990/7, p.3, para.9; and Add.2, p.3, para.6). One Working Group Member expressed the belief that a formulation taking into account the two proposed rewordings could be found.

Preambular paragraph 8

63. Both Informal Drafting Groups I and III proposed modifications to this provision (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.10; and Add.2, p.3, para.7). Two members of the Working Group stated that, like some participants in Drafting Group I, they were uncomfortable with the possible negative effects of singling out women and children for special attention. If the provision was to be included, however, one member preferred the formulation of Drafting Group I, with the substitution of the word "paid" for "granted" in the first line.

Preambular paragraph 8 bis (new)

64. Informal Drafting Group III proposed this new preambular paragraph on the importance of indigenous children remaining within their community (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.3, para.8). Two indigenous representatives expressed their belief that inclusion of a provision similar to this one was crucial for the survival of indigenous peoples everywhere. One indigenous representative further suggested the following wording for an operative paragraph to give effect to this preambular paragraph: "The right of indigenous children to retain contact with their own communities and extended families, and, if substitute care is necessary, to preferred placement within the child's own family, culture and community".

Preambular paragraph 9

65. Only Informal Drafting Group I submitted revised language for this provision (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.11). A member of the Working Group wondered whether the absence of this provision from the report of Drafting Group III implied that no consensus had been reached, and hoped that such a consensus could be sought through a process of open discussion between all interested parties.

Preambular paragraph 10

66. All three Informal Drafting Groups submitted revised language for this provision (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.12; Add.1, p.4; and Add.2, p.3, para.9). One member of the Working Group expressed a preference for the rewording of Drafting Group II if "of" could be substituted for "to" in the second line.

Preambular paragraph 11

67. Informal Drafting Groups I and III submitted modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.13; and Add.2, p.10). The Chairman of Drafting Group I called the Working Group's attention to an error in the text: the phrase "and their components," should be deleted from the third line of the proposal.

Preambular paragraph 12

68. Only Informal Drafting Group I proposed a modification to this provision (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.14).

Preambular paragraph 12 bis (new)

69. Informal Drafting Group II proposed a new preambular paragraph concerning treaty recognition, without prejudice as to its placement (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.4). A member of the Working Group stated that such a provision would be acceptable to him, and suggested only that the word "that" be added after "Considering" in the first line.

Preambular paragraph 12 ter: (new)

70. Informal Drafting Group II proposed a new preambular paragraph making reference to other international human rights instruments, without prejudice as to its placement (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.4). One Working Group member stated that such a provision would be acceptable, and suggested only the addition of the word "on" before "Civil" in the second line, and substitution of "of" for "to" in the third line.

Preambular paragraph 13

71. There were no suggested modifications to the proclamation.

Operative paragraph (new)

72. Informal Drafting Group II suggested a new operative paragraph (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.4) which it believes should come at the very beginning of the operative part of the Declaration . A member of the Working Group expressed support for this new paragraph if reworded to read: "Indigenous peoples have the right of self-determination, by virtue of which they may freely determine their political status and institutions and pursue their own economic, social, religious and cultural development."

Operative paragraph 1

73. Informal Drafting Group III proposed a slight modification of this provision (E/CN.4/ Sub.2/AC.4/1990/7/Add.2, p.4, para.1). One member of the Working Group expressed support for this rewording, and further suggested that the phrase "human rights and fundamental freedoms" be substituted for "fundamental rights and freedoms" in lines 1-2.

Operative paragraph 2

74. Informal Drafting Group III proposed slight modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.4, para.2). A member of the Working Group proposed replacing the phrase "the other human beings, human groups and" with "other" in lines 1-2, and deleting the word "adverse" in lines 3 and 4.

Operative paragraph 3

75. Informal Drafting Group III proposed slight modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.4, para.3).

Operative paragraph 4

76. Informal Drafting Group III proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.4, para.4). A non-governmental observer stressed the centrality of this provision, together with operative paragraph 5, to enable indigenous peoples to exercise world spiritual leadership.

Operative paragraph 5

77. Informal Drafting Group III restructured and significantly reworded this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.4, para.5).

Operative paragraph 6

78. Informal Drafting Group III proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.4, para.6). One indigenous representative stressed the importance of this provision for the survival and flourishing of indigenous peoples throughout the world.

Operative paragraph 7

79. Informal Drafting Group III proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.4, para.7). A member of the Working Group suggested that the words "Indigenous peoples have" be deleted from the beginning of the article, and that a full-stop be inserted after "assistance" in the second line.

Operative paragraph 8

80. Informal Drafting Group III proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.5, para.8).

Operative paragraph 9

81. Informal Drafting Group III proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.5, para.9).

Operative paragraph 10

82. Informal Drafting Group III proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.5, para.10).

Operative paragraph 11

83. Informal Drafting Group III proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.5, para.11). One non-governmental representative expressed his belief that Drafting Group III had agreed to delete the word "inter-cultural" from the first line so as to broaden the provision. One governmental observer suggested amending this provision or adding another operative paragraph making reference to multiracial organizations, and suggested article 2, para.1(e) of the International Covention on the Elimination of All Forms of Racial Discrimination was a good example of how this could be done. Another non-governmental organization suggested adding the phrase "and to have access to cross-cultural resources" after "education" in the first line, and the phrase "and their past and present contributions to the common heritage of humankind" after "aspirations," in the third line.

Operative paragraph 11 bis (new)

84. Informal Drafting Group I proposed a new operative paragraph at the beginning of Part III of the draft Universal Declaration, and suggested two alternative formulations for further discussion (E/CN.4/Sub.2/AC.4/1990/7, p.8, para.11 bis).

Operative paragraph 12

85. Informal Drafting Group I proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.12). One governmental observer stated that the second sentence of the provision as modified implied that indigenous peoples have a right of veto over State measures of expropriation, a concept which would be unacceptable to his Government. An indigenous representative expressed firm opposition to the phrase "or other type of mutually-accepted legally-binding instrument", as she felt that this wording might permit unilateral action.

Operative paragraph 12 bis (new)

86. Informal Drafting Group I proposed a new operative paragraph covering rights against alienation of land and resources (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.12 bis).

Operative paragraph 13

87. Informal Drafting Group I proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.4, para.13.)

Operative paragraph 14

88. Informal Drafting Group I proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.5, para.14.)

Operative paragraph 14 bis (new)

89. Informal Drafting Group I proposed a new operative paragraph covering intellectual property rights (E/CN.4/Sub.2/AC.4/1990/7, p.5, para.14 bis). One Government observer expressed concern that, as worded, this provision gave indigenous peoples right of access to telecommunication frequencies, a right not enjoyed by non-indigenous citizens. A member of the Working Group suggested that the provision be amended to address this concern by adding words to the effect of "on an equal footing with other peoples" at the end of the provision.

Operative paragraph 15

90. Informal Drafting Group I proposed significant modifications of this provision (at E/CN.4/Sub.2/AC.4/1990/7, page 5, para.15), and placed the entire paragraph in brackets, indicating the need for further discussion.

Operative paragraph 16

91. Informal Drafting Group I proposed modifications of this provision (at E/CN.4/Sub.2/AC.4/1990/7, p.5, para.16). One member of the Working Group suggested adding the words "of the environment" after "pollution" on in the fourth line for the sake of clarity. One Government and several indigenous observers stressed the importance of this provision. One indigenous representative suggested that the provision should make specific reference to sub-surface resources.

Operative paragraph 17

92. Informal Drafting Group I proposed significant modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.5, para.17). One indigenous representative suggested that the words ", including population transfers with adverse effects," be included after "projects" in the fourth line. Another indigenous representative expressed the view that, although this formulation referred to the important notion of equitable development, it did not go far enough in guaranteeing for indigenous peoples the right to determine the priorities for development which affects them, as in article 7, para.1, of ILO Convention No. 169. This same representative, joined by a number of other observers, suggested Part III of the draft Declaration could include a separate paragraph guaranteeing for indigenous peoples the right to development, not as yet explicitly mentioned in the draft Declaration. Another indigenous representative urged that the right be enjoyed on indigenous areas so as to provide opportunities for self-government.

Operative paragraph 18

93. Informal Drafting Group I proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.5, para.18). Two indigenous representative expressed the hope that this provision could include the duty of States to strengthen and promote subsistence economies, as provided for in article 23 of ILO Convention No. 169.

Operative paragraph 19

94. Informal Drafting Group I proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.6, para.19), and placed the entire paragraph in brackets indicating the need for further discussion. One indigenous representative commented that a provision similar to this one was crucial to giving effect to the other rights in the draft Declaration.

Operative paragraph 19 bis (new)

95. Informal Drafting Group I proposed a new operative paragraph providing for the right to humanitarian assistance (E/CN.4/Sub.2/AC.4/1990/7, p.6, para.19 bis). A member of the Working Group inquired whether "organizations" in the second line of this provision refereed to governmental or non-governmental organizations, or both. This same further wondered to whom "The latter" in the second line referred.

Operative paragraph 20

96. Informal Drafting Group I proposed modifications of this provision (E/CN.4/Sub.2/AC.4/1990/7, p.6, para.20).

Operative paragraph 20 bis (new)

97. Informal Drafting Group I proposed a new operative paragraph covering the right to traditional medicinal practices and resources (E/CN.4/Sub.2/AC.4/1990/7, p.6, para.20 bis).

Operative paragraph 20 ter (new)

98. Informal Drafting Group I proposed a new operative paragraph covering the right to prevent use of indigenous lands for military purposes (E/CN.4/Sub.2/AC.4/1990/7, p.6, para.20 ter). One indigenous representative underlined the significance of such a provision for the survival of the world's indigenous peoples.

Operative paragraph 21

99. Informal Drafting Group II restructured and reformulated this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.4, para.21). One member of the Working Group suggested that the word "adverse" be deleted from the second line of part (c).

Operative paragraph 22

100. Informal Drafting Group II restructured and reformulated this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.5, para.22).

Operative paragraph 23

101. Informal Drafting Group II restructured and reformulated this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.5, para.23). The Chairman of this Drafting Group called the Working Group's attention to a typographical error in the first line, pointing out that the word "on" should be replaced by the word "all". One Working Group Member suggested that the last sentence of part (b) be reworded to read "States have the duty ..." in harmony with para.22 (b) as suggested by Drafting Group II.

Operative paragraph 24

102. Informal Drafting Group II restructured and reformulated this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.5, para.24). A member of the Working Group suggested that the provision be reworded to read: "The right to determine their own identification as a member of a particular indigenous people. Such determination should be accepted by the State concerned".

Operative paragraph 25

103. No modifications were suggested for this provision.

Operative paragraph 26

104. Informal Drafting Group II proposed modifications to this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.5, para.26). A number of indigenous representatives underlined the importance of this provision, as amended.

Operative paragraph 27

105. Informal Drafting Group II proposed modifications to this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.1, p.5, para.27). A number of indigenous representatives stated that this provision should be enlarged to include bilateral and multilateral treaties between States with effects on indigenous peoples, as for example the United Nations Convention on the Law of the Sea.

Operative paragraph 28

106. Informal Drafting Group III proposed modifications to this provision (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.5, para.28). One non-governmental representative expressed his belief that the paragraph adopted by the Drafting Group had replaced the phrase "and to an effective remedy for any infringement, public or private" with the phrase "and to an effective tribunal in the event of any infringement of their rights under private or public law" in lines 3-4. Two indigenous representatives stressed the importance of such a provision to the effectiveness of the Declaration when adopted as a human rights instrument.

Operative paragraph 28 bis (new)

107. Informal Drafting Group III proposed a new operative paragraph obliging States to ensure the full enjoyment of their rights by indigenous peoples (E/CN.4/Sub.2/AC.4/1990/7/Add.2, p.5, para.29).

Operative paragraph 28 ter (new)

108. A member of the Working Group, joined by a non-governmental organization representative, suggested the addition of a clause on interpretation. Such a clause would acknowledge the inevitable interrelationship between the various parts of this Declaration, would eliminate the need for repetition, and would encourage the Working Group to adopt clearer and more rigorous formulations. It was suggested that the interpretation clause in the United Nations Declaration on the Right to Development (1986) could serve as a model for the Working Group.

Operative paragraph 29

109. No modifications were suggested for this provision.

Operative paragraph 30

110. No modifications were suggested for this provision.

General comments

111. In addition to suggestions relating to specific paragraphs, a number of comments were made relating to the use of terms throughout the draft Universal Declaration, or to a number of inter-connected paragraphs. Those observations are summarized in the following paragraphs.

112. Regarding the use of the terms "lands" and "territories" throughout the draft Declaration, hesitation was expressed by a member of the Working Group about the use of the term "territories", as in preambular paragraphs 3, 5, 6, and operative paragraphs 12, 12 bis, 14-18 and 20 ter in Informal Drafting Group I's report (E/CN.4/Sub.2/AC.4/1990/7), and in operative paragraph 5 of Drafting Group III's report (E/CN.4/Sub.2/AC.4/1990/7/Add.2). This member indicated that he would prefer the term "lands" with a proviso attached similar to that used in article 13(2) of ILO Convention No. 169, specifically including air and water within the definition of "lands". Another member and two indigenous representatives expressed their understanding that the word "territories" effectively guaranteed that "lands" would not simply imply solid but also water and air territories. This member further commented that he could accept a compromise such as "lands and waters". A number of governmental representatives also expressed their concerns about the use of the term "territories". (See written comments in E/CN.4/Sub.2/AC.4/1990/1; E/CN.4/Sub.2/AC.4/1990/1/Add.1; E/CN.4/Sub.2/AC.4/1990/ 1/Add.3.)

113. Two representatives stated that their Governments could not accept the use of the term "peoples", as in their countries' legal systems such a term implied separate sovereignty, but that "populations" or "communities" would be acceptable. (See written observations in E/CN.4/Sub.2/AC.4/1990/1.)

114. Two governmental observers pointed out that the term "self-determination" was unacceptable to their Governments because of its implicit reference to colonialism. One governmental observer stated that the term could be acceptable if it were made clearer that the right to self-determination did not imply the right to independent statehood. A number of indigenous representatives reiterated their firm belief that the Declaration must mention directly or indirectly the concept of self-determination.

115. With reference to "subsoil" resources, it was pointed out by a number of Governments that in their countries subsoil resources were owned by the State and could not be included within the provisions guaranteeing ownership of land and territories. (See written suggestions in E/CN.4/Sub.2/AC.4/1990/1/Add.1.)

116. Regarding the use of the terms "ownership", "possession", and "title" or "original title", it was said by two members of the Working Group that these difficult concepts will have to be harmonized throughout the document. One member suggested that if reference to title was thought to be necessary, that the phrasing be amended to read: "the right to such title as ownership, possession, and use of lands..." in operative paragraph 12, or "the effective right of title ..." in operative paragraph 14. One governmental

representative pointed out that, in his country, indigenous peoples had the right to inalienable possession, but not ownership, of their traditional lands, and hoped that the provision would be broadly worded so as to encompass this land tenure system.

117. One Working Group member pointed out that the use of the phrase "collective and individual" must be harmonized throughout the document. One observer noted his Government's concern that the use of the term "collective" might compromise the individual rights of indigenous peoples. A number of indigenous representatives stressed the central importance of the concept of collective rights to the adequate protection of indigenous peoples around the world.

118. A number of indigenous representatives stressed the importance of the concept of consent. One member of the Working Group suggested the phrase "in conjunction with them" be replaced by the phrase "with their participation and co-operation", in harmony with the language in the International Covenant on Human Rights. This suggestion would apply to paras.13 and 19 bis of E/CN.4/Sub.2/AC.4/1990/7; to paras.22(b) and 26 of Add.1; and to para.29 of Add.2. Regarding the use of the phrases "free and genuine consent", "free, genuine consent" and "free and informed consent", two Working Group members suggested that paras. 17, 19, and 20 ter of E/CN.4/Sub.2/AC.4/1990/7 could be harmonized with para.22(b) of E/CN.4/Sub.2/AC.4/ 1990/7/Add.1 to read "free and informed consent".

119. As to the "duty of States", a member of the Working Group expressed hesitations about formulating any part of the Declaration in the form of duties imposed on States, for fear that this would create unnecessary difficulties in reaching a broad-based consensus. Two indigenous representatives expressed their strong belief that the rights of indigenous peoples had to be accompanied by the corollary duties of States. One member of the Working Group felt that whichever phrase was chosen, the draft Declaration must be harmonized throughout.

120. Concerning drafting style it was suggested by an indigenous representative that the Declaration be reformulated into complete sentences, on the model of the Universal Declaration on Human Rights. A number of Governments suggested that the use of terms be harmonized to the greatest extent possible with other international human rights instruments, pursuant to General Assembly resolution 41/120. One Working Group Member commented that dividing paragraphs into lettered sub-paragraphs, as has now been proposed by the Informal Drafting Groups, has significantly increased the clarity of many of the provisions.

121. Numerous participants, governmental, indigenous and non-governmental, expressed their support for the extension of the Working Group session time from one week to two weeks. Many noted that drafting the Universal Declaration on the Rights of Indigenous Peoples was the most important task under the Working Group's mandate, and that the ten-day session this year had allowed the Group to make great headway on this task. A number of participants from all quarters, however, stated that without full interpretation services during the entire ten days, the drafting process would be severely compromised, as large segments of the indigenous representatives could not fully participate in the discussions. One indigenous representative commented that dividing the Working Group into three Drafting Groups also made it difficult for some indigenous delegations to participate in all aspects of the work.

122. One member, stressing that the Working Group had reached a very important juncture in its work, registered his strong support for the Chairman/Rapporteur's suggestion that the documents prepared by the three Informal Draftimg Groups (E/CN.4/Sub.2/AC.4/1990/7 and Add.1 and Add.2) be circulated to Governments, indigenous organizations and non-governmental organizations for their comments. The member suggested that the members of the Working Group themselves be encouraged to express their views on the proper formulation of the draft Declaration, as indeed one of them had done, in writing, at the present session. These comments could then be used by the Chairman/Rapporteur as the basis for her drafting assignment to be available at the ninth session of the Working Group in 1991. A number of governmental, indigenous and non-governmental representatives stated their intentions to submit written comments on the proposals made by the Informal Drafting Groups.

123. A number of participants suggested that future drafting by the Working Group concentrate on substance, while leaving stylistic revisions in the hands of the Chairman/Rapporteur. One Group member expressed his hope that the Chairman/Rapporteur would continue her invaluable work of synthesizing and clarifying the suggestions which would emerge from this session of the Working Group.

124. A number of governmental observers stressed the importance of producing a document which reconciled the points of view of all interested parties, based on a spirit of consensus. One governmental observer suggested that phrasing the Declaration in terms of objectives rather than rights might facilitate the task of reconciling governmental and indigenous points of view. An indigenous representative pointed out that consensus, while desirable, is not absolutely necessary, and suggested that if the draft Declaration could take the form of a broadly worded, aspirational instrument, it should be flexible enough to accommodate a variety of concerns.

125. One Working Group member, and a number of participants, both governmental and indigenous, expressed their regret that so few States participated in the drafting process. One indigenous representative stated her belief that this lack of participation was contrary to the spirit of the broad mandate given to the Working Group and hoped that this situation could be effectively addressed.

126. A number of participants contributed suggestions concerning how the drafting of the Universal Declaration on the Rights of Indigenous Peoples might proceed. One member of the Working Group felt that the time has now come to give fresh thought to the concept of self-determination. This member noted that legal concepts undergo a constant process of evolution, and that it is the responsibility of the Working Group to help shape the development of those concepts which are of relevance to the continued survival and flourishing of the world's indigenous peoples.

127. This member drew the Working Group's attention to an important academic statement by one indigenous representative. 1/ In that statement, it had been pointed out that the concept of self-determination would only in rare instances imply the right to independent statehood; rather, an indigenous,

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1/ S. James Anaya, "The Capacity of International Law to Advance Ethnic or Nationality Rights Claims", statement delivered at the Conference of USSR-USA Scholars' Dialogue on Human Rights and the Future, held at Moscow, 19-21 June 1990.

non-statist conception of self-determination implies substantive rights to the economic, political and social means for indigenous modes of life, and procedural rights to shape the decisions affecting those modes of life, all of which will vary with the contemporary circumstances of particular indigenous peoples around the world. He noted that the work of the Informal Drafting Groups this year had incorporated many of these substantive and procedural rights. He also pointed out that this conception of self-determination would, like many international human rights standards, condition but in no way deny the principle of territorial integrity.

128. Another indigenous representative summarized what for his people were the two basic principles which should be expressed by the final Declaration. The first is that indigenous peoples have rights equal with those of all other peoples; the second is that these rights should be implemented through the free negotiation between representatives of indigenous peoples and States of treaties subject to national and international law.

129. One governmental and two indigenous representatives expressed their views on the relationship between the draft Universal Declaration and ILO Convention No. 169. These participants stressed that the ILO Convention had established minimum standards to safeguard indigenous peoples, whereas the Declaration should go further in promoting and protecting indigenous peoples' rights to survive and flourish in the future. One representative stressed the strongly aspirational character of the Declaration and urged the Working Group to concentrate its efforts on simplifying and generalizing the draft language in line with this understanding. Other observers expressed their disappointment that in a number of instances the current draft Declaration sets standards even lower than those established by ILO Convention 169. (See also E/CN.4/Sub.2/AC.4/1990/2.)

130. A non-governmental representative pointed out to the Working Group that modesty was necessary if it were accurately to translate the indigenous understandings of rights into the language of a Universal Declaration. For example, the understanding of self-determination found in Western scholarship was based on territorial sovereignty, a notion which has never animated indigenous peoples' use of this term. This observer felt that by clarifying these differences, the Working Group might allay some of the fears of Governments about the implications of the draft Declaration.

IV. STUDY OF TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS PEOPLES

131. The Special Rapporteur of the Sub-Commission on the study of treaties, agreements and other constructive arrangements between States and indigenous peoples, Mr. Miguel Alfonso Martinez, made a statement to the Working Group explaining developments and progress relating to his mandate. He regretted that he could not present a preliminary report to the Working Group at this time. The delay was due, he explained, to the unprecedented nature of the Study and broadening of an already extensive mandate to include, within the meaning of "other constructive arrangements", any legal texts and other documents which are evidence of consensual participation by all parties to a legal or quasi-legal relationship. For example, the Special Rapporteur was of the opinion that the records of royal companies, if they entered into agreements of a legal, economic, political or territorial nature with indigenous peoples, would fall within his mandate as currently construed.

132. The Special Rapporteur also reported on his recent trips to the Archivo de Indias in Sevilla, Spain, where, regrettably, he had the opportunity only to examine in depth one of the 17 sections of the archives. He stated that he is planning a second trip to the archives and a visit, in the near future, to the Library of Congress in Washington, D.C.. He expressed his deep gratitude to the indigenous communities of the Treaty Six Area, to the Canadian Government, and to Ms. Sharon Venne, Mr. Russel Barsh, Mr. Howard Berman, Mr. Douglas Saunders, and Mr. Williams for the help they had given him. Finally, he stated that he will be sending out questionnaires, with requests for specific and detailed information, to Governments and indigenous communities later this year, in an effort to facilitate the completion of the Study.

133. With regard to the structure of the Study, the Special Rapporteur referred the Working Group to his original outline (E/CN.4/Sub.2/1988/24/Add.1). The Study would examine treaties across three dimensions: time, space and scope. As to time, the Special Rapporteur reiterated his intention to orient the Study towards the present and future state of treaty relations, but noted that some historical inquiry will be inevitable. As to the extent, his current estimation is that between 40 and 50 countries have committed themselves to arrangements falling within his mandate and that, of these, he has received or found substantial information on only eight. Finally, as to scope, the Special Rapporteur emphasized that the Study must serve as a guide to the means and value of setting up stable relationships between States and indigenous peoples, that it must address contemporary issues and problems, and that it must recommend specific actions which international and national bodies could take. For example, he is considering the inclusion of a recommendation that national and international fora assume legal jurisdiction to adjudicate treaty disputes between States and indigenous peoples.

134. Several indigenous representatives commented on the Study. They expressed their great confidence in the work of the Special Rapporteur and emphasized the importance of this subject matter to indigenous peoples around the world. One observer requested clarification from the representative of the Secretary-General on whether the consultant to the Special Rapporteur approved by the Economic and Social Council over a year ago had been retained. A number of representatives presented information on current or

past treaty violations in their countries, all of which were noted by the Special Rapporteur. One indigenous representative invited the Special Rapporteur to visit his country and study a current treaty rights dispute, and he also urged the Working Group to recommend to the Sub-Commission that an advisory commission be established to oversee treaty dispute resolution.

135. A number of indigenous representatives also addressed major themes which they felt might help shape the Study. The importance of indigenous legal systems for the interpretation of treaties was highlighted. They stressed the fact that Governments benefited on a daily basis from the sharing of lands granted by treaties, and that this should form the background for any discussion of treaty violations. Another observer presented a theoretical orientation for the Study, drawing a distinction between the objective and subjective meaning of treaties. Objectively, treaties could be used as a guide to land claims but clearly fell far short of the basic rights claimed by indigenous peoples today, as evidenced by the Working Group's work on standard setting. Subjectively, however, he believed that treaties are evidence that indigenous peoples were once viewed as States, implying a right of indigenous peoples to be part of the present and future constitutional organizations of States. He noted that the subjective meaning of treaties is of great value as a guide to the methods by which indigenous rights should be protected. This representative further suggested four recommendations which he believed the Study could make: that the United Nations recognize indigenous treaties; that the United Nations direct its Treaty Office to accept the registration, for full legal and documentary purposes, of indigenous treaties; that the United Nations promote the use of new treaties through supervision and the promulgation of minimum standards of fair negotiation; and that the United Nations refer treaty disputes to the International Court of Justice for adjudication.

136. One indigenous representative outlined development of treaties in the course of history. He mentioned an agreement which was made between an indigenous nation and an European nation. This agreement had been extraordinary and historical because of the principles which it settled, recognition and respect for one another's peoples; recognition and respect for one another's government; recognition and respect for one another's religion; with peace and friendship as the foundation. The agreement, as it was emphasized, set the standards for the process of treaty-making between European settlers and the indigenous nations. He emphasized that treaties are international instruments and agreements concluded in the context of the times and that these treaties continue to bind the signatories today and in the future. Further, he recommended that States and indigenous nations should continue the use of treaty-making in order to ensure that the principles of justice and equality prevail over economic and military might.

137. One Government observer noted that there was still a gap between promises made in his country's treaty with indigenous peoples and the day-to-day reality but he felt that the treaty could be honoured by the recognition of traditional ways of life. It was repeatedly stated that treaties are often violated and many indigenous representatives suggested that an independent body be set up for mediating disputes between States and indigenous peoples, either at the national or at the international level, in order to ascertain that these treaties are actually implemented the way they were designed.

138. One aboriginal representative reminded the Working Group that the subject of a modern treaty had been under discusssion since 1979 and that interest had

been rekindled in 1988. Unfortunately, promised resources had not yet been made available to allow indigenous groups to conduct community discussions. He invited the Government to make good its intention to achieve a real and lasting agreement between the parties and he stated that the outcome of this process needed to incorporate an impartial international dispute resolution mechanism. A Government observer expressed optimism, in the context of a new treaty or compact, that there is real hope for a process of reconciliation by which the non-indigenous people may be able to come to terms with the history of his country. He stated that the adoption of a national goal for all levels of Government, working with the aboriginal peoples to address co-operatively all the various issues, is a precondition of reconciliation.

V. OTHER MATTERS, INCLUDING THE WORK OF THE UNITED NATIONS VOLUNTARY FUND FOR INDIGENOUS POPULATIONS

139. By resolution 1989/36, the Sub-Commission entrusted Mr. Asbjorn Eide and Ms. Christy Mbonu with the task of preparing a working paper on possible United Nations activities for an international year for indigenous rights with an explicit focus on the development process and on promoting international co-operation with indigenous peoples'organizations. The working paper by Mr. Eide and Ms. Mbonu is contained in document E/CN.4/Sub.2/1990/41. On behalf of the Working Group, the Chairman/Rapporteur expressed her appreciation to the two authors for the excellent working paper.

140. During the eighth session of the Working Group, several indigenous representatives expressed strong support for an International Year for Indigenous Rights. They voiced concern about the upcoming 500 year anniversary of the colonization of the Americas, noting that that year should be one of assessment rather than celebration. A representative of a non-governmental organization stated that the preparations for the International Year would be a great opportunity for indigenous peoples to influence the operation of the United Nations system as a whole. A resolution submitted on behalf of a large number of indigenous peoples requested that the year 1992 be declared as the "International Year of Indigenous Peoples".

141. The Chairman of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations, Mr. Augusto Willemsen Díaz, made a statement describing the activities of the Fund. He noted the important role which the Voluntary Fund plays in providing financial assistance to indigenous peoples wanting to attend the Working Group and he stated that the Board of Trustees had determined that proposals submitted by indigenous groups and others concerning the broadening of the Fund's mandate would be seriously considered. The Chairman/Rapporteur expressed her gratitude to the Voluntary Fund and its Board of Trustees and to contributors to the Fund. In addition, she acknowledged the significant role and contribution of Mr. Willemsen Díaz, then as staff member of the United Nations Secretariat, to the preparation of the report by the Special Rapporteur of the Sub-Commission on the Study of the Problem of Discrimination against Indigenous Populations and to the formulation and early work of the Working Group.

142. One Government observer stressed the importance of enlarging the areas of application and activity of the Voluntary Fund. A non-governmental observer stressed the importance of organizing and financing training courses and seminars for indigenous peoples, noting that such courses and seminars should preferably be held at the regional level in order to make them more readily accessible to indigenous peoples.

143. An indigenous representative expressed concern about proposals to broaden the scope of the Voluntary Fund without first ensuring an increase in voluntary contributions. He further referred to complaints about the inadequacy of the Fund to assure proper representation of those groups which lacked financial capacity to attend the Working Group, as well as the financial strain a two-week programme had created for others. He expressed the hope that more Governments and organizations would decide to contribute to the Voluntary Fund. Another indigenous representative expressed his organization's desire to continue to contribute to the Fund and invited Governments to join them in such support.

144. A working paper (E/CN.4/Sub.2/AC.4/1990/6) and a questionnaire prepared by the United Nations Centre on Transnational Corporations (UNCTC) dealing with transnational investments and operations on the lands of indigenous peoples was introduced under this agenda item by a representative of UNCTC. He stated that a significant effort would be made to send a questionnaire to every known indigenous peoples organization, but he observed that the success of the project depended on the support of these organizations and their prompt response to the questionnaire. He further noted that the first report of this project, which is scheduled to be available for discussion at the ninth session of the Working Group in 1991, would primarily be a data summary and would focus on the nature, scope and extent of transnational corporation projects on indigenous peoples' lands.

145. An indigenous representative, addressing the matter of accessibility, expressed the hope that the Working Group would not be restricted to meetings in Geneva but would choose to hold future meetings in other regions of the world. Another indigenous representative observed that the Working Group would benefit from meeting in regional centres with significant concentrations of indigenous peoples. On behalf of Asia-Pacific Indigenous Peoples' Forum, he accordingly invited the Working Group to meet in Australia next year.

146. In the course of the discussion under this item, a representative of the Ainu Association of Japan expressed his gratitude to the Chairman/Rapporteur for her acceptance of their invitation to visit Hokkaido.

147. The Working Group welcomed of the announcement made about the establishment of the Asia Pacific Indigenous Peoples' Forum and about its intention to hold national and regional meetings to debate international issues relating to indigenous concerns. The proposal to convene, prior to the session of the Working Group, an intersessional meeting of indigenous peoples from that region in order to discuss indigenous rights and the draft Universal Declaration was particularly encouraged.

148. An indigenous representative appealed to the Working Group to take whatever action possible on behalf of the indigenous peoples of the Pacific in regard to the decision of a State to dispose of chemical weaponry in his geographical area. Another indigenous representative also expressed concern over the proposed destruction of chemical weapons and declared his organization's support for the hard-line stance against this proposed action taken by South Pacific Forum.

149. A representative of a non-governmental organization noted that more practical and concrete objectives, such as the development of technical assistance for indigenous peoples, needed to be formulated. He further observed that in order to promote the concerns of indigenous peoples more effectively they should not limit themselves to merely attending the Working Group but should also attend sessions of the Sub-Commission, Commission on Human Rights, the Economic and Social Council as well as other meetings held elsewhere in the United Nations system.

150. During the discussion under this agenda item, an indigenous representative stated his concern for securing intellectual property rights for indigenous peoples. Accordingly, he submitted to the Working Group a resolution addressing this issue which had been drafted during the informal indigenous peoples preparatory meetings Other resolutions submitted by the preparatory meetings were duly noted and addressed by the Group.

Annex I

DECISIONS AND RECOMMENDATIONS

1. The Working Group requests that its report, with the first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples and with the reports of three Informal Drafting Groups reproduced in separate annexes, be circulated for written comments and suggestions to Governments, indigenous peoples, intergovernmental organizations and non-governmental organizations.

2. The Working Group recommends that the Chairman/Rapporteur, Ms. Erica-Irene A. Daes, be entrusted with the task of preparing an extensive analytical commentary on the articles of the draft Universal Declaration based on her first revised text, the reports of the Informal Drafting Groups, the debate at the eighth session of the Working Group, the written observations received in accordance with paragraph 1 above, existing international human rights instruments, and other available comments. Such an analytical commentary is of great importance for the debate at the ninth session.

3. In connection with all the items on its agenda and in particular the review of developments, the Working Group encourages the continuation and intensification of the indigenous rights dialogue between indigenous peoples, members of the Working Group and Governments at sessions of the Group and in intersessional contacts at local, national and regional levels. The Working Group expresses its conviction that such a dialogue conducted in an atmosphere of good faith and trust can be very helpful to on-going United Nations efforts concerning all aspects of its human rights work, namely standard-setting, implementation, technical assistance and information.

4. The Group expresses its appreciation to the Informal Drafting Groups for their work and reports, and decides to authorize the Chairman/Rapporteur, in consultation with the members, to consider the possibility of establishing one or more such groups at the ninth session in 1991.

5. The Working Group expresses its appreciation to the Special Rapporteur of the Sub-Commission, Mr. Miguel Alfonso Martínez, for the information and flow of ideas which he has provided concerning the progress made on his study on treaties, agreements and other constructive arrangements between States and indigenous peoples. The Working Group encourages Governments and indigenous peoples to respond in detail to the questionnaires he has prepared for the purpose of collecting all the necessary information and the Group decides to reproduce his questionnaires together with an accompanying working paper as an annex to this report.

6. The Working Group expresses its appreciation to the United Nations Centre for Transnational Corporations for the working paper and questionnaire concerning transnational investments and operations on the lands of indigenous peoples, decides to include the questionnaire as an annex to this report, encourages all parties to provide the Centre for Transnational Corporations with the requested information, and invites the Centre for Transnational Corporations to report to the ninth session of the Working Group.

7. The Working Group expresses its appreciation to the various implementation bodies and advisory services machinery, including the Human Rights Committee and the expert on Guatemala, for their contribution to the realization of the human rights of indigenous peoples.

8. The Working Group recommends that the ninth session of the Working Group be of a two-weeek duration and that it benefit from full language services for the whole period of the session.

9. The Working Group reiterates the need to convene sessions of the Group in countries where indigenous peoples live and it has taken note of tentative invitations to this effect in the strong belief that such meetings in the field would greatly facilitate indigenous participation and improve Working Group understanding of indigenous circumstances.

10. The Working Group welcomes decision 1990/248, adopted by the Economic and Social Council on 25 May 1990, by which the Council recommends to the General Assembly to proclaim an international year for the world's indigenous peoples in 1993. Furthermore, the Working Group expresses its appreciation to Mr. Asbjorn Eide and Ms. Christy Mbonu for their excellent working paper on possible United Nations activities undertaken in connection with such a year, if it is approved, and expresses its belief that their recommendations form a good basis for future action.

11. The Working Group calls upon the Special Rapporteurs on human rights and the environment and on compensation for human rights violations, in their forthcoming reports to the Sub-Commission, to address indigenous concerns.

12. The Working Group recommends to the Preparatory Committees of the 1992 United Nations Conference on Environment and Development, in light of the experience and commitment of indigenous peoples concerning the issues in question, as well as their reliance on sound environment, to ensure full participation by indigenous peoples in the Conference proceedings.

13. The Working requests WIPO to submit a report to the ninth session of the Working Group concerning its activities affecting the interests of indigenous peoples, including the protection of folklore and traditional arts.

14. The Working Group recommends that Ms. Erica-Irene A. Daes be entrusted with the task of preparing, prior to its ninth session, a working paper on the cultural property of indigenous peoples, including questions relating to burial remains and sacred sites, and requests UNESCO to provide the author and the Working Group with information about its standards and activities in this regard. In this connection, the Group requests the Secretariat to provide the author with all the necessary assistance, including the compilation of all available information.

15. The Working Group requests the Centre for Human Rights, as soon as possible, to convene the two seminars on indigenous rights which have already been authorized, to include indigenous experts on the lists of invitees in accordance with existing practice, and to make the seminar reports available to the Working Group.

16. The Working Group expresses its gratitude to Governments, indigenous peoples and non-governmental organizations for contributions made to the United Nations Voluntary Fund for Indigenous Populations. In light of

pressing needs, the Group encourages the continuation and increase of such voluntary contributions. The Working Group feels, however, that at this point in time, for reasons related to lack of funding, it is not in a position to make suggestions concerning the proposed expansion of the Fund's activities.

17. The Working Group expresses its appreciation to the Centre for Human Rights for the publication of Fact Sheet No.9 on the Rights of Indigenous Peoples and calls for the widest possible distribution of the booklet.

18. The Working Group expresses its satisfaction with all the efforts made by indigenous peoples and States towards the constructive, equitable and peaceful solutions of conflictual situations. The Working Group is of the opinion that respect for human rights by all parties is an essential component of such efforts.

Annex II

FIRST REVISED TEXT OF THE DRAFT UNIVERSAL DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, AS PRESENTED BY THE CHAIRMAN/ RAPPORTEUR OF THE WORKING GROUP, Ms. ERICA-IRENE A. DAES (Document E/CN.4/Sub.2/1989/36, Annex II)

The General Assembly,

Considering indigenous peoples born free and equal in dignity and rights in accordance with existing international standards while recognizing the right of all individuals and groups to be different, to consider themselves different and to be regarded as such,

Considering that all peoples and human groups have contributed to the progress of civilizations and cultures which constitute the common heritage of humankind,

Recognizing the specific need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, traditions, culture and legal, social and economic structures, especially as these are tied to the lands which the groups have traditionally occupied,

Concerned that many indigenous peoples have been unable to enjoy and assert their inalienable human rights and fundamental freedoms, frequently resulting in insufficient land and resources, poverty and deprivation, which in turn may lead them to voice their grievances and to organize themselves in order to bring an end to all forms of discrimination and oppression which they face,

Convinced that all doctrines and practices of racial, ethnic or cultural superiority are legally wrong, morally condemnable and socially unjust,

Reaffirming that indigenous peoples in the exercise of their rights should be free from adverse distinction or discrimination of any kind,

Endorsing calls for the consolidation and strengthening of indigenous societies and their cultures and traditions through development based on their own needs and value systems and comprehensive participation in and consultation about all other relevant development efforts,

Emphasizing the need for special attention to the rights and skills of indigenous women and children,

Believing that indigenous peoples should be free to manage their own affairs to the greatest possible extent, while enjoying equal rights with other citizens in the political, economic and social life of States,

Bearing in mind that nothing in this declaration may be used as a justification for denying to any people, which otherwise satisfies the criteria generally established by human rights instruments and international law, its right to self-determination,

Calling on States to comply with and effectively implement all international human rights instruments as they apply to indigenous peoples,

Acknowledging the need for minimum standards taking account of the diverse realities of indigenous peoples in all parts of the world,

Solemnly proclaims the following declaration on rights of indigenous peoples and calls upon all States to take prompt and effective measures to implement the declaration in conjunction with the indigenous peoples.

PART I

1. The right to the full and effective enjoyment of all fundamental rights and freedoms, as well as the observance of the corresponding responsibilities, which are universally recognized in the Charter of the United Nations and in existing international human rights instruments.

2. The right to be free and equal to all the other human beings in dignity and rights and to be free from adverse distinction or discrimination of any kind.

PART II

3. The [collective] right to exist as distinct peoples and to be protected against genocide, as well as the [individual] rights to life, physical integrity, liberty and security of person.

4. The [collective] right to maintain and develop their ethnic and cultural characteristics and distinct identity, including the right of peoples and individuals to call themselves by their proper names.

5. The individual and collective right to protection against ethnocide. This protection shall include, in particular, prevention of any act which has the aim or effect of depriving them of their ethnic characteristics or cultural identity, of any form of forced assimilation or integration, of imposition of foreign life-styles and of any propaganda derogating their dignity and diversity.

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development. The rights to the manifestations of their cultures, including archaeological sites, artefacts, designs, technology and works of art, lie with the indigenous peoples or their members.

7. The right to require that States grant - within the resources available - the necessary assistance for the maintenance of their identity and their development.

8. The right to manifest, teach, practise and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial-grounds for these purposes.

9. The right to develop and promote their own languages, including an own literary language, and to use them for administrative, juridical, cultural and other purposes.

10. The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions.

11. The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures, and the duty of States to take the necessary measures, among other sections of the national community, with the object of eliminating prejudices and of fostering understanding and good relations.

PART III

12. The right of collective and individual ownership, possession and use of the lands or resources which they have traditionally occupied or used. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement.

13. The right to recognition of their own land-tenure systems for the protection and promotion of the use, enjoyment and occupancy of the land.

14. The right to special measures to ensure their ownership and control over surface and substance of resources pertaining to the territories they have traditionally occupied or otherwise used including flora and fauna, waters and ice sea.

15. The right to reclaim land and surface resources or where this is not possible, to seek just and fair compensation for the same, when the property has been taken away from them without consent, in particular, if such deprival has been based on theories such as those related to discovery, terra nullius, waste lands or idle lands. Compensation, if the parties agree, may take the form of land or resources of quality and legal status at least equal to that of the property previously owned by them.

16. The right to protection of their environment and in particular against any action or course of conduct which may result in the destruction, deterioration or pollution of their traditional habitat, land, air, water, sea ice, wildlife or other resources without free and informed consent of the indigenous peoples affected. The right to just and fair compensation for any such action or course of conduct.

17. The right to require that States consult with indigenous peoples and with both domestic and transnational corporations prior to the commencement of any large-scale projects, particularly natural resource projects or exploitation of mineral and other subsoil resources in order to enhance the projects' benefits and to mitigate any adverse economic, social, environmental and cultural effect. Just and fair compensation shall be provided for any such activity or adverse consequence undertaken.

PART IV

18. The right to maintain and develop within their areas of lands or territories their traditional economic structures and ways of life, to be secure in the traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting,

fresh- and salt-water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived.

19. The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities.

20. The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, and as far as possible to develop, plan and implement such programmes through their own institutions.

PART V

21. The right to participate on an equal footing with all the other citizens and without adverse discrimination in the political, economic and social life of the State and to have their specific character duly reflected in the legal system and in political and socio-economic institutions, including in particular proper regard to and recognition of indigenous laws and customs.

22. The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their life and destiny.

23. The [collective] right to autonomy in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions.

24. The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous people concerned for these purposes.

25. The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms.

26. The right to maintain and develop traditional contacts and co-operation, including cultural and social exchanges and trade, with their own kith and kin across State boundaries and the obligation of the State to adopt measures to facilitate such contacts.

27. The right to claim that States honour treaties and other agreements concluded with indigenous peoples.

PART VI

28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes and any infringement, public or private, between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and international and regional human rights review and complaints mechanisms.

PART VII

29. These rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world.

30. Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Annex III

REPORT OF INFORMAL DRAFTING GROUP I, CHAIRED BY Mr. MIGUEL ALFONSO MARTINEZ
(Document E/CN.4/Sub.2/AC.4/1990/7)

INTRODUCTION

At the first meeting of its eighth session, on 23 July 1990, the Working Group on Indigenous Populations decided to establish an informal drafting group, under the chairmanship of Mr. Miguel Alfonso Martinez, to consider the provisions on land and resources contained in the Preamble and Parts III and IV of the first revised text of the draft Universal Declaration on Indigenous Rights submitted by the Chairman/Rapporteur of the Working Group (Annex II, E/CN.4/Sub.2/1989/36).

PARTICIPATION

The informal drafting group, under the chairmanship of Mr. Alfonso Martinez, was attended by Mr. Ribot Hatano, another member of the Working Group. Present also were observers for a number of governments, one United Nations specialized agency and a considerable number of non-governmental organizations.

METHOD OF WORK

The informal drafting group held six meetings from the afternoon of 23 July 1990 to the afternoon of 27 July 1990. The group held a first reading of the text under its mandate, during which a wide-ranging discussion lead to a number of specific proposals to revise the text. On 27 July 1990, the Chairman offered a draft text in which he attempted to consolidate the various proposals advanced in the light of (a) the general trends which emerged from the debate, (b) the revised text submitted by the Chairman/Rapporteur and (c) her analytical commentary contained in document E/CN.4/Sub.2/1990/39.

During the discussion of the text offered by the Chairman, further proposals were made to improve the text, some of which were incorporated in the final text (Annex I).

Annex I to this report contains the text offered by the drafting group for further discussion by the Plenary of the Working Group and consideration by the Chairman/Rapporteur.

Annex II contains specific concerns expressed by some participants on the text offered by the drafting group which they had asked to be reflected in the group's report.

ANNEX I OF DRAFTING GROUP 1

FINAL TEXT RECOMMENDED BY DRAFTING GROUP ONE (PREAMBLE AND PARTS III AND IV OF THE DRAFT UNIVERSAL DECLARATION ON INDIGENOUS RIGHTS)

The General Assembly,

Considering that indigenous peoples and individuals are born free and are equal to all other peoples and individuals in dignity and rights, in accordance with international standards,

Recognizing the right of all indigenous peoples to be different, to consider themselves different and to be respected as such,

Considering that all peoples have contributed and will further contribute to the progress, richness and diversity of civilizations and cultures which constitute the common heritage of humankind,

Recognizing the specific and urgent need to promote and protect those rights and characteristics which stem from indigenous peoples' histories, spirituality, traditions and cultures, as well as from their legal, social, spiritual and economic structures and institutions; especially as these are tied to the land and other territories and resources traditionally occupied or otherwise used by them,

Emphasizing the need for confidence-building measures in indigenous lands and other territories, in order to promote peace, demilitarization, understanding and friendly relations among all peoples of the world,

Concerned that many indigenous peoples have been and continue to be unable to exercise, enjoy and assert their inalienable rights and freedoms including their basic human rights and fundamental freedoms, frequently resulting in insufficient land and other territories and resources, poverty, deprivation and marginalization; which in turn may lead them to voice their grievances and to organize themselves in order to bring an end to all forms of discrimination and oppression which they face,

Convinced that all doctrines and practices of racial, national, ethnic, religious or cultural superiority are legally and scientifically wrong, morally condemnable and socially unjust,

Reaffirming that all indigenous peoples, in the exercise of their rights and freedoms, cannot be subjected to any kind of [adverse] discrimination,

Endorsing calls for the revitalization, consolidation and strengthening of indigenous societies and their traditional institutions, cultures and social structures, through respect for their inalienable right to self-determination, which includes their right to development oriented to the fulfilment of their own spiritual and material needs,

Emphasizing that special attention should be granted to the promotion, protection and implementation of the rights of indigenous women and children and to the acquisition and utilization of their traditional skills,

Convinced that the right of indigenous peoples to self-determination includes their right freely to determine their present and future relationships with the political, economic and social life of States and that the reaffirmation of said right and of all others enshrined in this Declaration is not to be construed, at present, as in any way limiting their enjoyment of equal rights with citizens of the States in which they currently reside,

Bearing in mind that nothing in this Declaration may be used as a justification for denying to any people, which otherwise satisfies the criteria generally established by human rights instruments and international law, its right to self-determination,

Recalling the duty of all States to comply with, in good faith, and effectively implement all international instruments to which they are parties, as they apply to indigenous peoples and their components, in conjunction with them,

Acknowledging the need for international standards taking account of the diverse realities of indigenous peoples in all parts of the world.

SOLEMNLY PROCLAIMS the following DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES and calls upon all States to take prompt and effective measures to implement this Declaration in conjunction with indigenous peoples:

PART III

Paragraph 11 bis. See annex II for the alternative texts proposed by the group,

Paragraph 12. The right to ownership, [original title,] possession and use of the lands and other territories and resources traditionally occupied or otherwise used by them. Said lands and other territories and resources may only be used by other parties with free and genuine consent of the indigenous people concerned, as expressed through their own institutions, in accordance with their traditions, and as witnessed by means of a treaty, agreement or other type of mutually-accepted legally-binding instrument,

Paragraph 12 bis. The right to demand and obtain from non-indigenous authorities full and effective protection of indigenous lands and other territories and resources, particularly from alienation to non-indigenous parties; as well as the formers' effective recognition of the need for indigenous peoples to secure and maintain an adequate land-resource base for the satisfaction of their spiritual and material needs,

Paragraph 13. The right to full and effective recognition of and protection for their own land-tenure systems and institutions, as well as for their traditions with respect to land/resources use, enjoyment and occupancy,

Paragraph 14. The right to effective ownership, [original title,] possession, use, conservation and control of renewable and non-renewable surface and subsurface resources pertaining to the lands and other territories traditionally occupied or otherwise used by them, including flora and fauna, fresh and sea water and sea ice,

Paragraph 14 bis. The right to ownership, protection and control of their intellectual property and their right to use broadcast and all other forms of telecommunication frequencies,

[Paragraph 15. The right to reclaim the land and other territories and resources traditionally occupied or otherwise used by them, irrespective of such claim being time-barred or prescribed. This includes the right to effectively seek and obtain just and fair compensation where repossession is not possible, and when the alienation of said lands, territories and resources has been either based on theories such as those related to discovery, terra nullius, waste lands or idle lands, materialized by means of coercion, or was otherwise obtained without their free and genuine consent. Compensation, if the parties agree, may take the form of land and other territories and resources of quality, quantity and legal status at least equal to that of the lands, other territories and resources traditionally occupied or otherwise used by them,]

Paragraph 16. The right to a safe and healthy environment and the right to the protection of the environmental integrity of the land and other territories and resources traditionally occupied or otherwise used by indigenous peoples. Where any destruction, deterioration or pollution occurs, the right to full and effective restitution, including compensation for damages of a collective and/or individual nature,

Paragraph 17. The right to require that non-indigenous authorities and other parties, including transnational corporations, request and obtain the free and genuine consent of the indigenous people concerned prior to the commencement of any project directly related to indigenous lands and other territories and resources. Preliminary studies must be undertaken, in collaboration with the indigenous peoples concerned to assess the environmental, social, cultural and economic impacts of these activities. The terms of the economic and other benefits that are to accrue to indigenous peoples as a result of said projects must be established with their free and genuine consent, as witnessed by a treaty, agreement or any other mutually-agreed legally-binding instrument. It also includes the right to seek and obtain just and fair compensation for damages sustained by indigenous peoples after the initiation of said mutually-agreed projects and caused by acts or omissions for which non-indigenous parties are subject to administrative, civil or criminal responsibility.

PART IV

Paragraph 18. The right to maintain, protect and further develop, within their traditional lands and other territories, their economic structures, institutions, and traditions. This right includes the right to be secure in the enjoyment of their traditional means of subsistence and ways of life. In no case may an indigenous people be deprived of their means of subsistence. It also includes the right to seek and obtain just, fair and mutually-agreed compensation, if they are so deprived.

[Paragraph 19. The right to seek and obtain from non-indigenous authorities the fulfilment of their responsibilities or obligations related to the effective and continuing improvement of the economic and social conditions of, as well as the quality of life for, indigenous peoples, with their free, genuine consent and according to their own priorities.]

Paragraph 19 bis. The right to humanitarian assistance from States and national and international organizations. The latter shall ensure, in conjunction with the peoples concerned, that their assistance accrues to indigenous peoples' direct and full benefit.

Paragraph 20. The right to determine, plan and implement, in the context of their right of self-determination, all health, housing, and other social, cultural and economic measures affecting them, and execute such measures through their own institutions.

Paragraph 20 bis. The right to their own traditional medicines and health practices. This includes the right to protection of vital medicinal plants, animals, and minerals. The above may not be construed as a limitation to indigenous poeples' right of access to services provided by the non-indigenous health systems, if they so wish.

Paragraph 20 ter. The right to prevent the utilization of their lands and other territories or resources for all military purposes, and their utilization for the storage or disposal of radioactive, toxic, industrial or any other wastes. This includes the right to seek and obtain effective, fair, just and mutually-agreed compensation, and the restoration of the environment and the health of the people and individuals concerned, if said lands, territories or resources have been used without their free, genuine consent.

ANNEX II OF DRAFTING GROUP I

COMMENTARY ON THE RECOMMENDED TEXT, ANNEX I

PREAMBLE

PP 1 Recommended.

PP 2 Recommended. Two participants raised their concern that individual indigenous peoples should be able to consider themselves different, and were not sure that the present text covered this. One participant wanted to ensure that asserting the individual's right to be different caused no ambiguity.

PP 3 Recommended. Some participants preferred an explicit mention of "social groups" in addition to the notion of peoples.

PP 4 Recommended. Two participants had some concerns about including the words "and other territories and resources traditionally occupied or othewise used by them".

PP 5 Recommended.

PP 6 Recommended.

PP 7 Recommended.

PP 8 Recommended. Although the word "adverse" is in brackets, there was general concern expressed about qualifying the concept of discrimination.

PP 9 Recommended. One participant expressed the necessity for indigenous peoples to be involved in decision-making processes on issues which affect them, and expressed a preference for the formulation of Preambular paragraph 7 as contained in document E/CN.4/Sub.2/1989/36.

PP 10 Recommended. Two participants expressed strong concerns about the possible negative effects of singling out women and children.

PP 11 Recommended. Two participants stated that they would not wish the words "the right freely to determine their present and future relationships with the political, economic and social life of States" to be construed as implying a right for indigenous peoples to secede.

PP 12 Recommended. One participant expressed concern about the paragraphs reference to self-determination.

PP 13 Recommended.

PP 14 Recommended.

PP 15 Recommended.

PART III

OP 11 bis Due to insufficient time for consideration, the group decided to submit both the text proposed by the Chairman and the alternative proposal by one participant, to the Plenary of the working group for its consideration:

["Paragraph 11 bis. The right effectively to secure full respect from non-indigenous parties, in all the latters' policies and actions relevant to indigenous rights, for the profound relationship of indigenous people with the lands and other territories and resources traditionally occupied or otherwise used by them. This right includes the recognition of the importance attached by indigenous peoples to their environmental integrity.";]

["Paragraph 11 bis. States have a duty to respect in all relevant policies and actions the profound relationship of indigenous peoples with their traditional territories, lands and resources and to ensure the recognition and maintenance of an adequate land and resource base for indigeous peoples, in conjunction with them."]

OP 12 Recommended. One participant expressed a preference for the formulation in document E/CN.4/Sub.2/1989/36, paragraph 12. Two participants expressed concern that the second sentence of the article appears to give indigenous peoples a right against expropriation not shared by other citizens of the State, and reserved their positions.

OP 12 bis Recommended.

OP 13 Recommended.

OP 14 Recommended. Two participants observed their positions on the entire paragraph.

OP 14 bis Recommended.

OP 15 Recommended. Two participants reserved their positions on the entire paragraph.

OP 16 Recommended.

OP 17 Recommended. One participant reserved its position because the provision appears to give indigenous peoples veto power over development projects. Another participant submitted the following text for addition to the paragraph:

"The law shall provide appropriate sanctions against any expropriation of the land of the interested peoples and the governments must impose sanctions to avoid such infractions."

There was no time to consider this proposal.

OP 18 Recommended.

OP 19 The group decided to put this paragraph in brackets, indicating the need for further consideration.

OP 19 bis Recommended.

OP 20 Recommended.

OP 20 bis Recommended.

OP 20 ter Recommended. One participant reserved his position.

Annex IV

REPORT OF INFORMAL DRAFTING GROUP II, CHAIRED BY MR. DANILO TURK (Document E/CN.4/Sub.2/AC.4/1990/7/Add.1)

INTRODUCTION

1. The Drafting Group held seven meetings from 23 to 27 July 1990. In accordance with the instructions given to the Group by the plenary meeting of the Working Group, it was incumbent to the deliberation and revision of Part V of the draft declaration and pertinent preambular paragraphs relating to political rights.

ELECTION OF OFFICERS

2. At its first meeting, 23 July 1990, the Drafting Group elected Mr. Danilo Turk as Chairman/Rapporteur.

PARTICIPATION

3. The meetings of the Drafting Group, which were opened to all members of the Sub-Commission, were attended by the representatives of States, non-governmental organizations, non-governmental organizations of indigenous peoples as well as representatives of their national organizations and individuals.

DOCUMENTS

4. The Drafting Group had before it the following documents:

- The draft universal declaration on indigenous peoples presented by the Chairman/Rapporteur, Mrs. Erica-Irene Daes and contained in Annex II of document E/CN.4/Sub.2/1989/36;

- Analytical commentary to the draft declaration elaborated by Mrs. Erica-Irene Daes, E/CN.4/Sub.2/1990/39.

ORGANIZATION OF WORK

5. At the first meeting, on 23 July 1990, the Chairman/Rapporteur made a brief introductory statement referring to the history of the draft declaration and the work so far accomplished. He proposed, and the Group agreed, that the draft submitted by the Chairman/Rapporteur, Mrs. Erica-Irene Daes, should constitute the basis and framework for the Group's own deliberations. The meetings of small informal working groups were used to facilitate the drafting process.

6. Accordingly, the Group decided to work its way, article by article, through the draft submitted by the Chairman/Rapporteur, modifying and replacing particular provisions in the submitted text as might be necessary and to adopt agreed texts of the pertinent articles as the work proceeded. It was accepted that, when the whole text had been covered in this way, further consideration would have to be given to the placement of articles considered.

CONSIDERATION AND DRAFTING OF PARAGRAPHS

7. In the light of these decisions on its working methods, the Drafting Group embarked on its examination, revision and deliberation as necessary of the draft paragraphs submitted by the Chairman/Rapporteur.

8. At its 1st to 7th meetings from 23 to 27 July 1990, the Group considered and adopted four preambular paragraphs and paragraph 1 and paragraphs 21-27 of the operative part.

9. The text of these paragraphs adopted by the Group is set out in the annex to the present report.

10. This text was the result of a wide-ranging discussion and reflects a number of alternative proposals advanced by the participants. It represents a reflection of those ideas which attracted the widest expression of support, and in most if not all cases, no strong expression of opposition. The paragraphs thus formulated are transmitted to the plenary and to the Chairman/Rapporteur and are, as such, understood to be subject to further refinement, with a view to achieving consistency, balance, and clarity for the draft declaration as a whole.

ANNEX

TEXT OF PARAGRAPHS PROVISIONALLY ADOPTED BY DRAFTING GROUP II

PREAMBLE

Preambular paragraph 1.

Considering indigenous peoples equal to all others in dignity and rights, while recognizing the right of all peoples and individuals to be different, to consider themselves different, and to be respected as such.

Preambular paragraph 10.

Bearing in mind that nothing in this declaration may be used as a justification for denying to any indigenous peoples their right to self-determination.

New preambular paragraphs adopted without prejudice to their placement.

Considering the treaties and agreements with indigenous peoples continue to be matters of international concern and responsibility.

Noting that the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights affirm the fundamental importance of the right to self-determination, as well as the right of all human beings to pursue the material, cultural, and spiritual development in conditions of freedom and dignity.

PART I

Paragraph 1

Indigenous peoples have the right to self-determination, by virtue of which they may freely determine their political status, pursue their own economic, social, religious and cultural development, and determine their own institutions.

PART V

Paragraph 21

(a) The right to have their distinct political, social, cultural and economic characteristics duly reflected in the institutions of the government under which they live.

(b) The right to full recognition and proper regard to indigenous laws, customs and practices in the legal systems and political institutions of the State.

(c) The right of members of indigenous peoples to participate fully and without adverse discrimination in the political, economic and social life of the State. The exercise of this right shall in no way adversely affect the collective rights of the peoples concerned.

Paragraph 22

(a) The right to participate effectively at the State and international levels, through representatives freely selected by themselves and by means of their own choosing, in policy and decision-making and in implementation in all matters which they consider may affect their rights, lives, and futures.

(b) The right of indigenous peoples to be involved, through appropriate procedures, determined in conjunction with them, in devising any laws or administrative measures that may affect them directly, and to obtain their free and informed consent through implementing such measures. States have the duty to guarantee the full exercise of these rights.

Paragraph 23

(a) The right to determine, without interference, on matters pertaining to their own affairs, including, inter alia, control over lands and resources, social and political relations, dispute resolution, criminal jurisdiction, environmental protection and managements, economic activities, education, culture, traditional religious practices, health, taxation and entry by non-members.

(b) The right of indigenous peoples concerned to determine the nature and structures of their institutions and to select the membership of such institutions according to their own procedures. The duty of States, where the peoples concerned so desire, to recognize such institutions and their membership through the legal systems and political institutions of the State.

Paragraph 24

The right to determine their own membership. The duty of States to accept that determination.

Paragraph 25

The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms.

Paragraph 26

The right of indigenous peoples divided by international borders to maintain and develop relations and commerce including unrestricted travel for cultural, social, sporting, religious and traditional economic purposes, across State borders. The duty of States to adopt measures, in conjunction with indigenous peoples, to facilitate the exercise of this right.

Paragraph 27

The duty of States to honour and to implement treaties and other agreements concluded with indigenous peoples according to their original intent, pursuant to the principle of pacta sunt servanda.

Annex V

REPORT OF INFORMAL DRAFTING GROUP III,
CHAIRED BY Ms. ERICA-IRENE A. DAES
(Document E/CN.4/Sub.2/AC.4/1990/7/Add.2)

INTRODUCTION

According to a proposal made by the Chairman/Rapporteur, during its eighth session, the Working Group on Indigenous Populations decided to institute three drafting groups in the first week of its meeting with the basic aim to accelerate the work on the draft Universal Declaration and with the wish to adopt some of the principles of the draft Declaration, including the principles contained in the Preamble. Subsequently three drafting groups were established on 23 July 1990.

DRAFTING GROUP III

Drafting Group III dealt with the examination of the principles contained in Parts I, II, VI and VII of the draft Declaration as well as a great number of the provisions contained in the Preamble. In the reporting period the Drafting Group had five meetings, unfortunately without translation facilities.

During the first session the Chairman introduced the principles of the Declaration and drew the attention of the participants to documents E/CN.4/Sub.2/1989/36 and E/CN.4/Sub.2/1990/39 which would be the basic documentation for the consideration of the above-mentioned principles. She clarified to the participants that everyone was free to submit, orally or in writing, any amendments which might improve, supplement or correct the existing text of the first revised text of the draft Declaration. She requested all participants to attend the meetings most attentively as to be able to accomplish as much as possible the work of Drafting Group III. She also expressed the view that only those principles on which full consensus and agreement would be reached should appear in the present report of the Drafting Group. After an exchange of views with the participants - both Government observers and representatives of Indigenous peoples' organizations - the consideration of the above-mentioned principles started, in the form of a constructive dialogue which took place in an open and co-operative atmosphere.

A number of relevant amendments was submitted by the Government observers as well as by representatives of the indigenous peoples, which after thorough discussion have been incorporated in the relevant principles, including two new preambular paragraphs as well as one new article.

A total of 12 preambular principles as well as 15 articles were adopted by Working Group III which can be found in Annex I to this report.

The report of this Drafting Group will be presented to the plenary of the Working Group and will be annexed to the annual report of the Working Group.

ANNEX I OF DRAFTING GROUP III

First reading of the draft principles contained in the first revised text of the draft Universal Declaration on Indigenous Rights, as presented by the Chairman/Rapporteur, Ms. Erica-Irene Daes, in document E/CN.4/Sub.2/1989/36

The General Assembly,

Considering indigenous peoples born free and equal in dignity and rights in accordance with international standards while recognizing the right of all individuals and groups to be different, to consider themselves different and to be respected as such,

Considering that all peoples and human groups have contributed to the progress of civilizations and cultures which constitute the common heritage of humankind,

Recognizing the specific need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, traditions, culture and laws and political, social and economic institutions, all of which arise from the lands which the indigenous peoples have traditionally occupied,

Convinced that all doctrines and practices of racial, ethnic or cultural superiority are legally wrong, morally condemnable and socially unjust,

Reaffirming that indigenous peoples in the exercise of their rights should be free from adverse distinction or adverse discrimination of any kind,

Endorsing calls for the consolidation and strengthening of indigenous societies and their cultures and traditions through control over development affecting them and their territories based on their own needs and value systems and comprehensive participation in all other relevant development activities within and among States,

Emphasizing the need for special attention to the rights and skills of indigenous women, youth and children,

Recognizing in particular that it is in the best interest of indigenous children for the child's indigenous community to retain, wherever possible, common responsibility for the upbringing and development of the child,

Emphasizing that this Declaration [takes into account] the rights of individuals and communities as guaranteed in all other international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination,

Calling on States to comply with and effectively implement all international instruments as they apply to indigenous peoples and in conjunction with them,

Acknowledging the need for minimum standards taking account of the diverse realities and aspirations of indigenous peoples in all parts of the world,

Solemnly proclaims the following Declaration on rights of indigenous peoples and calls upon all States to take prompt and effective measures to implement the Declaration in conjunction with the indigenous peoples.

PART I

1. The right to the full and effective enjoyment of all fundamental rights and freedoms, as well as the observance of the corresponding responsibilities, which are universally recognized in the Charter of the United Nations and in international human rights instruments.

2. The right to be free and equal to all the other human beings, human groups and peoples in dignity and rights and to be free from adverse distinction or adverse discrimination of any kind.

PART II

3. The collective right to exist as distinct peoples and to be protected against genocide, as well as the individual rights to life, physical and mental integrity, liberty and security of person.

4. The collective and individual right to maintain and develop their ethnic and cultural characteristics and identities, including the rights of peoples and individuals to respect for their self-identification. This right includes also the right of each indigenous people to pursue its own cultural, political and economical development.

5. The individual and collective right to protection against ethnocide and cultural genocide. This protection shall include, in particular, prevention of and appropriate redress for:

(a) any act which has the aim or effect of depriving them of the integrity of their distinct societies;

(b) any form of forced or involuntary assimilation or integration;

(c) dispossession of territories, lands or resources;

(d) imposition of alien cultures or ways of life; or

(e) any propaganda or information directed against them.

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development, including the right to control and maintain the manifestations of their cultures, such as archaeological and historical sites and structures, artefacts, designs, technology and works of art and the right to the restoration of cultural property taken without their consent. In addition the artistic and technological creations of indigenous individuals shall be recognized and respected as cultural property.

7. Indigenous peoples have the right to require that States grant the necessary assistance and States have a duty, within the resources available, to make available to indigenous peoples, opportunities and resources for the full development of their own institutions and initiatives for full enjoyment of the human rights and fundamental freedoms referred to in this Declaration.

8. The right to manifest, teach, practise and observe their own spiritual traditions, customs and ceremonies, to maintain, protect and have access in privacy to sacred sites, ceremonial implements, natural materials and burial grounds for these purposes, and the right to the repatriation of human remains.

9. The right to develop, promote, maintain and transmit to future generations their own languages and written literacy and to use them for administrative, juridical, cultural and other purposes. Measures shall be taken to ensure that indigenous peoples can understand and be understood in legal and administrative proceedings where necessary through the provision of interpretation or by other effective means.

10. The right to all forms of education, including in particular the right to have access to education in their own languages, and with respect for their own cultural traditions and heritage, and to establish, structure, conduct and control their own educational systems and institutions. Appropriate resources shall be provided for this purpose and minimum standards established by the competent authority in agreement with indigenous peoples.

11. The right to promote inter-cultural information and education, recognizing the dignity and diversity of their cultures, history and aspirations, in particular through the mass media, and the duty of States to take the necessary measures among the national community, with the object of eliminating prejudices and of fostering understanding and good relations.

PART VI

28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes between States and indigenous peoples, groups or individuals and to an effective remedy for any infringement, public or private. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and competent international, regional and domestic human rights review and complaints mechanisms.

29. States have a duty, in conjunction with the indigenous peoples concerned, to take prompt and effective measures to ensure the full enjoyment of the exercise of the indigenous rights and other human rights and fundamental freedoms referred to in this Declaration.

PART VII

30. These rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world.

31. Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Annex VI

WORKING PAPER AND QUESTIONNAIRES BY THE SPECIAL RAPPORTEUR OF THE SUB-COMMISSION, MR. MIGUEL ALFONSO MARTINEZ, REFLECTING THE PROGRESS MADE AND IDENTIFYING INFORMATION NEEDED FOR HIS CONTINUING WORK ON THE STUDY OF TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS

1. Subsequent to both my appointment as Special Rapporteur by the Sub-Commission and the confirmation of this appointment by the Commission on Human Rights and the Economic and Social Council, I have proceeded with and made good progress on research of all aspects of the Study assigned to me.

2. In the course of this research work it has become abundantly clear, and increasingly so, that the scope of the study is particularly broad. The treaties, agreements and other arrangements in question number in the thousands; the legal nature and contents of these texts vary significantly; the use and application of these texts likewise vary within and between States; and the national and international legal issues concerning treaties, agreements and other constructive arrangements raise questions of great complexity on several scores, including conclusion, interpretation, application and possible termination of such instruments.

3. I am grateful to Governments, indigenous peoples and their organizations, academic institutions and individual scholars who have come forward and provided me with what is already a valuable source of materials concerning the topics brought up by the Study. Nevertheless, in order to obtain full information about all the various aspects, additional research and collection of texts and other reports and materials are essential.

4. For these reasons, I am enclosing with this brief Working Paper two questionnaires addressed respectively to Governments and indigenous peoples. It is my request that the Working Group annex them to its report and that the Secretariat distribute them as soon as possible by means of notes verbale and letters. The questionnaires reflect closely the issues and questions which have come up in my research so far and it is my sincere hope and expectation that all the parties concerned will provide me with their responses and points of view as soon as possible, preferably by the end of April 1991, so as to take into account their views in my preliminary report.

QUESTIONNAIRES PREPARED BY THE SPECIAL RAPPORTEUR FOR THE STUDY OF TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS

A. GOVERNMENT VERSION

PART I

Has your country, or a former colonial power with previous authority upon your country's present territory (if this was the situation), entered into any treaties, agreements or other types of formal or informal mutually agreed upon

instruments with indigenous peoples? Likewise, have indigenous peoples who currently live in the present territory of your country entered into any treaties, agreements or other types of informal instruments with other States?

(a) If your answer is no, please go to Part III.

(b) If your answer is yes, the Special Rapporteur would request all relevant materials and information with respect to the questions under Parts II and III.

PART II

1. Copies of treaties, agreements or other types of formal or informal mutually agreed upon instruments between indigenous peoples and States.

2. Other constructive arrangements constituting elements governing relations between indigenous peoples and States, in particular those consisting of mutual obligations or containing guarantees relating to indigenous rights (i.e. land, resources, traditional practices and beliefs, etc.).

3. Parties to the treaties, agreements or other constructive arrangements, including statistical data on the respective indigenous peoples.

4. Historical circumstances of the negotiation, conclusion, celebration, application, amendment, modification and/or termination of the treaties, agreements or other constructive arrangements.

(Please specify the nature of the instrument, explaining the circumstances leading to negotiations and the signing of the treaty; the powers and specific instructions to the negotiator representing the State concerning the conduct of the treaty negotiation and celebration; the existence of an internal law (of the State) regarding the format of treaty negotiations; the existence of national laws requiring the consent of the indigenous peoples for the validity of the said instrument; etc.)

5. The purpose of the treaties, agreements or other constructive arrangements (i.e. peace, boundary delimitation, friendship, co-operation, trade, etc.);

(The cause and object of the instrument; the position of the State in matters of land and resources within the treaty area; express or tacit language in the instrument implying the relinquishing of indigenous rights to lands and resources.)

6. The substantive contents of the treaties, agreements or other constructive arrangements.

7. The authoritative language(s) in which the treaties, agreements or other constructive arrangements were concluded.

(The existence of different language versions of the treaty, including indigenous languages; up-dating, in terms of language, of the treaty.)

8. Applicable rules of interpretation of the treaties, agreements or other constructive arrangements (of both their texts and connected legal instruments).

(In the case of reinterpretation: the possibility for indigenous peoples to hold the Government to the original provisions of the treaty; the existence of legal means for indigenous peoples to reject formally reinterpretation they disagree with; consultation with treaty peoples regarding changes proposed by the State; the existence, within present implementation machinery, of the requirement to consult with the indigenous party.)

9. Conflict resolution provisions of the treaties, agreements or other constructive arrangements.

(Settling of disputes in relation to treaty interpretation; the existence of mechanisms within the treaty provisions to resolve outstanding disputes.)

10. Methods of registration and publication of the treaties, agreements or other constructive arrangements.

11. Constitutional and legislative provisions on the conclusion of the treaties, agreements or other constructive arrangements, as well as the constitutional and legislative provisions on the application and termination of such instruments.

(The decision-making authority with regard to the implementation of the treaty provisions; the existence of a specific Government branch to deal exclusively with the treaties; right of veto for indigenous peoples on issues directly related to the treaty.)

12. The juridical status and official recognition by States and indigenous peoples of the treaties, agreements or other constructive arrangements.

13. Constitutional and other guarantees and legislative and administrative regulations based on the treaties, agreements or other constructive arrangements, or derived from the same.

14. Judicial or other types of decisions by higher and lower courts, or other organs with comparative authority, at the local, provincial/state and national levels, involving treaties, agreements or other constructive arrangements.

15. Practical consequences for all parties resulting from the implementation, or lack thereof, of the treaties, agreements or other constructive arrangements.

(Recognition, through provisions of the instruments and consequent practice, of indigenous legal systems)

16. On-going or planned negotiations for the conclusion of new treaties, agreements or other constructive arrangements, as well as for the amendment or modification of existing ones.

17. Treaties, agreements or other constructive arrangements which have been terminated, abandoned or rendered obsolete by indigenous peoples or States, either unilaterally or bilaterally.

(The existence of administrative or legislative measures altering the nature of the treaty relationship, steps or measures taken to actually terminate the treaty.)

18. Bilateral or multilateral treaties between States establishing rights for and/or obligations of indigenous peoples.

PART III

19. What is your Government's position with respect to the principles and norms that govern the interpretation of treaties and other instruments?

20. Does your Government currently have authority to make treaties with indigenous peoples? How would it be exercised?

21. Does your Government currently have authority to make other kinds of agreements with indigenous peoples? With what objects, and by what procedure?

22. What measures has your Government undertaken, or intends to undertake, to resolve situations of conflict arising from treaty, or non-treaty relations, between your State and indigenous peoples?

23. Is there any process by which disputes regarding treaties could be settled by an independent body either within or outside the State.?

24. What recommendation do you have for the Special Rapporteur with regard to the choice of existing or new international fora for the resolution of treaty or non-treaty issues between the State and indigenous peoples?

(For instance: the use of a mutually agreed upon, impartial third party, such as the International Court of Justice, to provide the necessary assistance to mediate or resolve important treaties and other instruments in question.)

25. Would you recommend that, in the process of treating making and treaty application, States and indigenous peoples establish relations in political, cultural and economic spheres of interaction?

26. Does your Government have any suggestions to the Special Rapporteur which would help define the future role of indigenous treaties and other instruments?

27. Please provide any additional information you consider relevant.

B. INDIGENOUS PEOPLES/ORGANIZATIONS VERSION

PART I

Do you feel bound to honour any treaty, agreement or other constructive arrangements with the Government of the country in which you live, or with a colonial Government, or with any other European countries?

(a) If your answer is no, please go to Part III.

(b) If your answer is yes, the Special Rapporteur would request all relevant materials and information with respect to the questions under Parts II and III.

PART II

1. Copies of treaties, agreements or other types of formal or informal mutually agreed upon instruments between indigenous peoples and States.

2. Other constructive arrangements constituting elements governing relations between indigenous peoples and States, in particular those consisting of mutal obligations or containing guarantees relating to indigenous rights (i.e. land/or resources, traditional practices and beliefs, etc.).

3. Parties to the treaties, agreements or other constructive arrangements, including statistical data on the respective indigenous peoples.

4. Historical circumstances of the negotiation, conclusion, celebration, application, amendment, modification and/or termination of the treaties, agreements or other constructive arrangements.

(Please specify the nature of the instrument, explaining the circumstances leading to negotiations and the signing of the treaty; indigenous law regarding the format of the treaty negotiations; legal system used and the authority exercised by the indigenous peoples at the time of entering into the treaty (sovereignty and indigenous government); authority and legitimacy of those who signed the treaty on behalf of indigenous peoples; process of ratification practised by the indigenous peoples within or outside the indigenous legal system.)

5. The purpose of the treaties, agreements or other constructive arrangements (i.e. peace, boundary delimitation, friendship, co-operation, trade, etc.);

(The cause and object of the instrument; use of treaties as a pretext for legitimizing settlement, without any intention on the part of the State to observe the indigenous peoples' treaty rights; the express or tacit language in the instrument implying the relinquishing of indigenous rights to lands and resources; the specific requests made to indigenous peoples prior to entering into the treaty: peace, friendship, land cession or cession of indigenous governments; the exact nature of treaty agreement).

6. The substantive contents of the treaties, agreements or other constructive arrangements.

7. The authoritative language(s) in which the treaties, agreements or other constructive arrangements were concluded.

(The existence of different language versions of the treaty, including indigenous languages; up-dating, in terms of language, of the treaty.)

8. Applicable rules of interpretation of the treaties, agreements or other constructive arrangements (of both their texts and connected legal instruments).

(In the case of reinterpretation: the possibility for indigenous peoples to hold the Government to the original provisions of the treaty; the existence of legal means for indigenous peoples to reject formally reinterpretation they disagree with; consultation with treaty peoples regarding changes proposed by the State; the existence, within present implementation machinery, of the requirement to consult with the indigenous party.)

9. Conflict resolution provisions of the treaties, agreements or other constructive arrangements.

(Settling of disputes in relation to treaty interpretation; the existence of mechanisms within the treaty provisions to resolve outstanding disputes.)

10. Methods of registration and publication of the treaties, agreements or other constructive arrangements.

(Transmission of knowledge contained in the treaty from generation to generation; written or oral transmission; the sharing of treaty knowledge by all, or the existence of a specific group of individuals having exclusive knowledge.)

11. Constitutional and legislative provisions on the conclusion of the treaties, agreements or other constructive arrangements, as well as the constitutional and legislative provisions on the application and termination of such instruments.

(The decision-making authority with regard to the implementation of the treaty provisions; the position of indigenous peoples on the treaty mechanism; right of veto for indigenous peoples on issues directly related to the treaty.)

12. The juridical status and official recognition by States and indigenous peoples of the treaties, agreements or other constructive arrangements.

13. Practical consequences for all parties resulting from the implementation, or lack thereof, of the treaties, agreements or other constructive arrangements.

(Recognition, through provisions of the instruments and consequent practice, of indigenous legal systems)

14. On-going or planned negotiations for the conclusion of new treaties, agreements or other constructive arrangements, as well as for the amendment or modification of existing ones.

15. Treaties, agreements or other constructive arrangements which have been terminated, abandoned or rendered obsolete by indigenous peoples or States, either unilaterally or bilaterally.

(The existence of administrative or legislative measures altering the nature of the treaty relationship; steps or measures taken to actually terminate the treaty.)

PART III

16. What is the position of your people/organization with respect to the principles and norms that govern the interpretation of treaties and other instruments?

17. Would you be willing to make a new treaty today with the national Government? If your answer is no, please explain why. If your answer is yes, please indicate what you want to include in a new treaty.

18. What do you think would be the best way to see that treaties with indigenous peoples are enforced and respected?

19. What measures have indigenous peoples/organizations undertaken to resolve situations of conflict arising from treaty, or non-treaty, relations between States and indigenous peoples?

20. Does your Government currently have authority to make treaties with indigenous peoples? How would it be exercised?

21. Does your Government currently have authority to make other kinds of agreements with indigenous peoples? With what objects, and by what procedure?

22. Would you recommend that, in the process of treaty making and treaty application, indigenous peoples and States establish relations in political, cultural and economic spheres of interaction?

23. Does your people/organization have any suggestions to the Special Rapporteur which would help define the future role of indigenous treaties and other instruments?

24. Please provide any additional information you consider relevant.

Annex VII

QUESTIONNAIRE SUBMITTED BY THE UNITED NATIONS
CENTRE FOR TRANSNATIONAL CORPORATIONS

1990 Questionnaire on Transnational Investments and Operations on the Lands of Indigenous Peoples

for the

United Nations Centre on Transnational Corporations (UNCTC)

Person responding: _____

Contact address: _____
_____
_____
_____

Telephone (and fax) number _____

The following information is being gathered for a data base on the investments and the operations of transnational corporations on the lands of indigenous peoples, in accordance with resolution 1989/36 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The purpose of this data base is to understand the scope and nature of changes which are taking place in the areas inhabited or claimed by indigenous peoples, to assist the Working Group on Indigenous Populations in its standard-setting tasks, and to enable the Centre on Transnational Corporations to determine the socio-cultural impact of TNCs on indigenous peoples. It should not be seen as a vehicle for making specific complaints about violations of human rights.

Please answer the following questions as fully and in as much detail as possible, attaching maps, statistics, and other relevant information as appropriate.

Please return as soon as possible (but no later than 1 January 1991) to:

Lorraine Ruffing
United Nations Centre on Transnational Corporations
Room DC2-1244
Two UN Plaza
New York, NY 10017

Fax No.: (212) 963-2146

PART 1

Name, contact address and telephone (and fax number) of the person or organization who answers this questionnaire:

_____

_____

_____

_____

1. Mark the areas you currently occupy on the map attached to this questionnaire (in blue, if possible). Please indicate the longitudinal and latitudinal measures where possible.

2. Also mark any areas you do not currently occupy, but which are traditional to your people and now under claim or in dispute (in red, if possible)

3. Please provide more detailed maps of the area if you can.

4. What are the names of the indigenous groups living in this area? _____

_____

5. What languages do your people speak? _____

_____

6. How many indigenous people live in the area? _____

7. What percentage are male, female and children (under 15 years)?

_____

_____

8. How many non-indigenous people (if any) live in this area? _____

9. What percentage are male, female and children (under 15 years)?

_____

_____

10. Please indicate if any of the following activities are taking place in your area: (For each case in which your answer is "yes", please fill in one of the attached sheets entitled PART 2.)

- tourism yes _ no _
- fish ranching, fishing or aquaculture yes _ no _
- oil and/or gas exploration/development yes _ no _
- mining and/or exploration for minerals yes _ no _
- logging, tree farming or reforestation yes _ no _
- dams (for water, power or flood control) yes _ no _
- farming, cattle ranches or other agricultural activities yes _ no _
- construction of railroads, pipelines roads or airstrips yes _ no _
- manufacturing or production activities yes _ no _
- crafts or other forms of artistic expression yes _ no _
- support services such as transportation, retail or wholesale business, or construction yes _ no _
- others (specify) _____

_____

_____

_____

PART 2

Description of activity

(Complete the following questions a-i for each activity identified in Part 1)

a Description of the activity (including the kinds of minerals, trees or crops produced, and the methods used for mining, logging and transportation)

_____

_____

_____

_____

_____

b Exact location of the activity (please mark it on the map of your area provided with this questionnaire)

_____

_____

_____

_____

c Names of companies or organizations involved in this activity (include parent companies and their home countries, if known)

_____

_____

_____

_____

_____

_____

_____

d Size of the activity (i.e. the amount of hectares/acres of land used per year; the amount of ore mined per year, the amount of trees cut or crops raised yearly; annual revenues; number of employess per annum)

_____

_____

_____

_____

_____

_____

_____

e Year this activity began 19__

f Participation of indigenous people in the activity:

- Was your group contacted or consulted before this activity began? yes _ no _

- Did your group participate in the planning of this activity? yes _ no _

- Does your group have a role in the ownership or management of the activity? yes _ no _
  (if yes, please specify) _____

_____

_____

_____

_____

_____

_____

- Does your group have any contractual or legal relations with any of the parties involoved in this activity? yes _ no _
  (if yes, please explain) _____

_____

_____

_____

- What income or other benefits (if any) does your group receive from this activity? _____

_____

_____

_____

- How many members of your group (if any) are employed by the organization in charge of this activity?

_____

- Are these employees members of a trade union? If yes, what is the name of it, and what other trade unions are involved in the activity?

_____

_____

_____

_____

_____

_____

_____

_____

- If there is more than one trade union operating on the project are the wages, training and other benefits comparable? (please explain)

_____

_____

_____

_____

- If there are no trade unions, are the wages and other benefits indigenous employess receive similar to the wages and other benefits non-indigenous employees receive? (please explain)

_____

_____

_____

_____

g Has this activity had any of the following effects (provide details where possible):

- deforestation (removal of trees) yes _ no _
- desertification (formation of barren land) yes _ no _
- increase soil erosion yes _ no _
- altered stream or river quality or water level yes _ no _
- reduced amount or quality of drinking water yes _ no _
- reduced air quality (smoke, gases, odors) yes _ no _
- decrease in the number of fish or wildlife yes _ no _
- change in migration patterns of animals yes _ no _
- change in migration patterns of non-indigenous and indigenous people yes _ no _
- decrease the average level of education yes _ no _
- increased unemployment yes _ no _
- increase the death rate, disease, health problems or illness yes _ no _
- interfered with traditional subsistence or cultural activities yes _ no _

(other effects) _____

_____

_____

_____

h. If you answered yes to any of the questions regarding effects (noted in the above question), what is being done (by indigenous people or by others) to prevent or repair these effects?

_____

_____

_____

_____

_____

_____

_____

_____

i. What measures are being taken by the company or organization to lessen the negative impacts this activity has on your group?

ADDITIONAL SPACE FOR ANY FURTHER COMMENTS

SYMBOL GUIDE

Use this guide to identify the location and type of activity taking place.

Activity	Symbol
Tourism	A
Fish ranching	B
Fishing	C
Aquaculture	D
Oil exploration	E
Gas exploration	F
Oil development	G
Gas development	H
Mining exploration	I
Mining development	J
Logging	K
Tree farming	L
Reforestation	M
Dam construction - for water	N
Dam construction - for power	O
Dam construction - for flood control	P
Farming	Q
Cattle ranching	R
Agricultural activities	S
Construction of roads	T
Construction of railroads	U
Construction of pipelines	V
Construction of airstrips	W
Manufacturing/production activities	X
Artistic/craft work	Y
Support services (such as transportation, retail/wholesale business, or construction)	Z